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MOTOR CARRIER SAFETY AND THE FEDERAL HIGHWAY ADMINISTRATION'S EDUCATION AND ENFORCEMENT EFFORTS: OPTIONS INTENDED TO IMPROVE AN OVERLOADED PROGRAM

PREPARED AT THE REQUEST OF

HON. ERNEST F. HOLLINGS, *Chairman*

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, April 10, 1989.

DEAR COLLEAGUE: As Chairman of the Senate Committee on Commerce, Science, and Transportation, I am pleased to provide you with a Committee Print entitled: "Motor Carrier Safety and the Federal Highway Administration's Education and Enforcement Efforts: Options Intended to Improve an Overloaded Program." This study was prepared at the request of the Committee by the Congressional Research Service of the Library of Congress.

Our Committee has oversight responsibilities to ensure the efficiency and effectivensss of the Federal Highway Administration's (FHWA) motor carrier safety program. In light of our continuing interest in improving commercial motor vehicle safety, I believe that this CRS report will prove extremely useful, especially in our review of FHWA's motor carrier safety program. This report provides a comprehensive analysis of the status and current problems associated with this safety effort as well as options identified by CRS to improve FHWA's activities and mandate.

While this report has been neither approved, disapproved or considered by the Committee, I believe that it will benefit all of our Members and their staff.

Sincerely,

ERNEST F. HOLLINGS, *Chairman.*

LETTER OF SUBMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, March 23, 1989.

Hon. ERNEST F. HOLLINGS, *Chairman*
Hon. JOHN C. DANFORTH, *Ranking Minority Member, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.*

DEAR SENATORS: In response to your request we are forwarding our report entitled "Motor Carrier Safety and the Federal Highway Administration's Education and Enforcement Efforts: Options Intended to Improve an Overloaded Program."

The purpose of this report is threefold: 1) to analyze the progress FHWA has made towards implementing an effective motor carrier safety program, 2) to consider areas of concern regarding FHWA's program and problems that FHWA faces when trying to implement this program, and 3) to outline and evaluate options that are intended to promote the effectiveness and efficiency of FHWA's program.

This CRS report was written by Dr. Paul F. Rothberg of our Science Policy Research Division.

I trust that this report will serve the needs of your Committee as you review the contributions of FHWA's program to commercial motor vehicle safety and consider whether any changes are needed to improve the implementation of this program.

Thank you for the opportunity to assist your Committee.

Sincerely,

JOSEPH E. ROSS, *Director.*

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EXECUTIVE SUMMARY

The Federal Highway Administration's (FHWA) motor carrier safety program is a multi-faceted, essential education and enforcement effort that could be substantially strengthened. FHWA's efforts to educate truck and bus companies are useful when the motor carriers take significant actions to comply with the safety regulations. Many carriers, however, only take the necessary steps to improve their operations when FHWA brings enforcement actions against them. FHWA's enforcement effort, however, is suffering because FHWA lacks the manpower, authorities, and policies needed to implement a vigorous, effective, and widespread effort.

The safety and compliance record of the commercial motor carrier industry is cause for much concern. Although the data are rather rough, it is estimated that this industry is involved in over 500,000 accidents that result in over 5750 deaths and 160,000 injuries each year.[1] As indicated in tables 1 and 2 (see text), this high number of deaths and injuries continues year after year despite increasing Federal funds spent to reduce the number and severity of these accidents. (The exact percentage of these accidents caused by the motoring public versus that caused by commercial drivers/carriers is unknown.) Furthermore, FHWA has assigned more than one-half of the motor carriers that they have reviewed a less than satisfactory safety rating.[2] FHWA has determined that these carriers do not have adequate functioning safety management controls to meet FHWA's safety fitness standard. This means that FHWA has determined that these carriers are not in compliance with one or more major components of either the Federal motor carrier safety or the hazardous materials transportation regulations. Although it is not a requirement per se, numerous truck companies do not even have a copy of these Federal regulations; some do not even know they are subject to these regulations.

With its staff of some 303 safety specialists and managers in its regions, FHWA is struggling to promote the safety and the degree of compliance with specified safety regulations of some 180,000 truck and bus companies, 5 million commercial drivers, and 25,000 shippers of hazardous materials. Even though its employees are dedicated to its mission, FHWA cannot perform effectively all of the safety-related tasks that Congress and the Secretary of Transportation have assigned to it.

Out of some $24 million in its FY 1988 safety budget, FHWA directly used about $14.2 million to enforce the Federal motor carrier safety, hazardous materials transportation, and financial responsi-

[1] These deaths or injuries result from accidents involving medium- and heavy-weight vehicles weighing 10,000 pounds or more. While all of the commercial vehicles involved in these accidents were not subject to FHWA's jurisdiction, the vast majority are subject to motor carrier safety regulations either at the Federal or State level.

[2] As of Mar. 2, 1989.

bility regulations and to educate industry about its responsibilities under these regulations. FHWA's program targets the heart of the safety problems found in the motor carrier industry. It deals with such concerns as driver fatigue, vehicle maintenance, insurance coverage, driver qualifications, management review of drivers, and compliance with the hazardous materials transportation regulations.

This report first reviews the current status and concerns associated with this program, and then, analyzes options designed to improve its effectiveness and efficiency.

Recent Accomplishments or Activities Undertaken to Improve FHWA's Program

Especially during the last three years, FHWA has undertaken concerted efforts to improve and strengthen numerous aspects of its motor carrier safety program. To deal more effectively with its workload, FHWA has instituted a new system of prioritizing which motor carriers are most in need of auditing. FHWA has increased its regional work staff by 165 employees during the last few years, going from 138 in FY 1985 to 303 at the end of FY 1988. In addition, this safety organization has improved the national uniformity of its program, by centralizing its safety rating process and by seeking to improve the consistency of its enforcement actions taken against motor carriers. To improve the quality of its operations, FHWA has instituted several new training courses at the DOT's Transportation Safety Institute, including new enforcement procedures.

FHWA has taken several steps to improve the overall management structure of its operations. Each of FHWA's nine regions now has a Federal Program Manager and a State Program Manager. FHWA is improving its management information systems, including the development of micro-computer software packages that will allow managers to evaluate various enforcement and educational programs at the State and regional level.

FHWA's outreach program, which includes serving as a safety consultant and assigning safety ratings, is helping to promote compliance with motor carrier safety regulations, thus sometimes reducing the need for future enforcement actions. This Agency has developed and published informative brochures that are widely disseminated to many motor carriers some of whom have previously never received FHWA's assistance. Even if Congress decides to strengthen FHWA's enforcement mandate, it will be possible and important to continue most of FHWA's educational activities.

FHWA now has in place a systematic process that could be used to evaluate the safety fitness of most interstate motor carriers during the next ten to twenty years. (This projection assumes no increase in personnel.) This shorter and more efficient safety rating procedure allows FHWA to contact many more carriers than was previously possible. However, this rating activity along with other educational activities consumed 51 percent of the workload time of the FHWA (nonmanagement) regional motor carrier safety staff during FY 1988.

The tradeoff is that time spent on educating the motor carrier industry is time that cannot be spent bringing enforcement actions against motor carriers with known safety problems. During FY 1988 FHWA non-management regional safety staff spent only thirty-five percent of their time on enforcement activities. With respect to motor carrier safety, does Congress want FHWA to be primarily a public safety consultant, primarily an enforcement agency, or some balance of the two?

Those companies that violate the Federal safety regulations and are caught must now deal with an improved FHWA enforcement system. FHWA has implemented a shortened enforcement report procedure, which has reduced the time required for its safety specialists to prepare enforcement cases. FHWA has placed control over its enforcement process in the hands of its Office of Motor Carriers and now uses FHWA's legal staff primarily for complex cases.

These multiple and substantial improvements in the FHWA safety program do not necessarily result in perceptible or directly measurable improvements in motor carrier safety. It is not feasible to measure the most important impact that FHWA probably has had on motor carrier safety—namely, the prevention of accidents that would likely have occurred without FHWA's education and enforcement efforts.

Areas of Concern

Several major areas of concern are addressed in this report. These are: the heavy workload of the FHWA; enforcement policies and practices that reduce FHWA's impact on promoting compliance with Federal safety regulations; the limited, some might say inadequate, attention directed to hazardous materials transportation safety; shortcomings of FHWA's safety rating process; and the question of whether FHWA is devoting its resources to carriers most in need of auditing.

WORKLOAD AND RESOURCE QUESTIONS

The major problem facing the FHWA is that its manpower resources are so limited that this Agency can barely scratch the surface of the safety problems found in the interstate motor carrier industry.

The size of this industry is so large and the tasks facing FHWA are so numerous that this agency has always promoted and relied heavily upon industry's voluntary compliance with the safety regulations. As demonstrated by continuing high rates of trucks taken out-of-service at roadside inspections, increases in the number of deaths and injuries from accidents involving commercial motor vehicles since 1982, and widespread noncompliance with these regulations, this policy, overall, has proven to be rather ineffective. (Some companies, however, are so dedicated to safety that FHWA's program is sometimes unnecessary. The safety standards of these companies far exceed the Federal standards, which set a minimum or floor level.)

In view of the size of this industry and the high rate of noncompliance, the FHWA cannot implement effectively the safety pro-

grams that Congress envisioned in recent motor carrier safety laws. For example, given its current resources and policies, it will be 10 years or more before all motor carriers that FHWA has determined to need follow-up auditing can be visited by FHWA personnel. Even with the limited assistance that the States are now providing, FHWA's current staff cannot deal effectively with the expanded and continued growth and rapid turnover in this industry.

A substantial increase in its regional staff, e.g., another 150 safety specialists, would allow FHWA to begin to deal effectively with many of the safety problems in this industry. The workload problems will only increase as FHWA begins to face its new responsibilities resulting from increased pressures for more enforcement of drug regulations, elimination of the commercial zone exemption, and enforcement of the commercial driver license requirements. New authorities and responsibilities expected under legislation that would reauthorize the Hazardous Materials Transportation Act of 1975 as well as forthcoming truck and bus safety legislation also would add to FHWA's workload. Expanding FHWA's staff by 150 safety specialists with adequate support would require the annual expenditure of roughly another $8 million. Competition for Federal transportation safety dollars is already intense.

Increasing FHWA's enforcement staff by itself, however, will not be sufficient to address this workload problem. One practical approach would be to increase also the capabilities of the States to join in a strengthened partnership with the FHWA under the Motor Carrier Safety Assistance Program (MCSAP). FHWA and the States participating in MCSAP are already moving in this direction with increasing numbers of State-conducted safety reviews (SR) and compliance reviews (CR).[3] The extent of their progress is severely restricted by the amount of funds available for MCSAP. Roughly $3 million to $5 million of additional Highway Trust Fund monies beyond those sums now authorized for MCSAP would be needed annually to start funding substantially more vigorous State SR/CR efforts. Some might argue, however, that the current funding level for MCSAP is sufficient and that an adequate number of inspections and audits is already being conducted. Furthermore, it can be argued that funds in the Highway Trust Fund should be used to improve our Nation's highway infrastructure, which would also promote highway safety.

The workload issue is directly related to a much broader transportation safety question: Are we spending enough Federal dollars on the enforcement of truck and bus safety regulations relative to what is being spent on the enforcement of commercial aviation and railroad safety regulations? The preliminary analysis presented in this report suggests that the answer is no. When compared with the amount spent on the enforcement of railroad or commercial aviation safety regulations, the amount of funds spent on the enforcement of commercial motor vehicle safety regulations is not in

[3] As discussed later, a safety review is a quick check of a motor carrier's safety systems; a compliance review is a much more indepth check for safety violations. Throughout this report, the terms "compliance review" and "audit" are used interchangeably.

proportion to the number of deaths or injuries that has occurred or is likely to occur. The disparity is wide.

POLICIES AND AUTHORITY TO CONDUCT A VIGOROUS ENFORCEMENT PROGRAM

Providing FHWA with additional safety specialists and increasing MCSAP funds to support additional State educational and enforcement activities would help but would still be insufficient steps to ensure an effective and vigorous national motor carrier safety program. As discussed below, FHWA currently lacks the policies and authorities needed to bring substantial and meaningful financial penalties consistently against the motor carrier industry for serious safety violations.

FHWA is using most of the new enforcement authorities that Congress provided in the Motor Carrier Safety Act of 1984. Under this Act, it is now possible for FHWA to bring civil penalties against specified motor carriers for violations of its safety rules and regulations. (Prior to 1984 the majority of the enforcement actions were required to be handled by a U.S. attorney in U.S. district court under the criminal enforcement procedures of Part II of the Interstate Commerce Act enacted in 1935.) Despite these new enforcement authorities and more than a doubling of FHWA's regional staff, the number of civil penalty enforcement cases recommended for prosecution for alleged violations during FY 1986 and FY 1987 did not significantly increase (see table 7). During this period, FHWA's senior field staff had to devote some of its time to the training of the newly hired employees. FHWA did increase the number of such cases by some 16 percent during FY 1988, as compared to FY 1986, but many of the FY 1988 cases have been subsequently dropped. The number of cases prosecuted and closed annually during this period decreased by 14 percent. The average annual amount of fines collected during this period was $1,965,000. As explained below, this penalty amount does not appear to be sending an effective message to many in the motor carrier industry.

One reason that partly explains why FHWA has not substantially increased the number of enforcement cases in proportion to the increase in the number of its staff is its first visit "freebie" practice. Even though serious safety violations may have been documentable during this first contact, FHWA, in at least 96 percent of the visits, did not bring an enforcement action against a motor carrier. Given the high degree of noncompliance with the safety regulations and the workload facing FHWA as well as a continuing high number of deaths and injuries resulting from accidents involving motor carriers, does Congress want FHWA to continue this practice?

FHWA uses its penalty authorities only as a last resort tool to promote compliance. At the final settlement table, FHWA employees often substantially reduce the amounts of civil penalties that are imposed on motor carriers from the amounts originally requested. This practice is allowed under the Motor Carrier Safety Act of 1984. Before a final penalty is determined, a motor carrier is allowed to present evidence of what actions it has taken to improve

its level of compliance with the safety regulations since last visited by the FHWA. FHWA employees pay a great deal of attention to these actions. The Motor Carrier Safety Act of 1984 also requires FHWA employees to consider other factors such as prior history of violations and ability to pay in setting penalty amounts. It is frequently rather difficult for FHWA to impose substantial penalties and give adequate attention to the various factors that are required to be considered under current law.

The flexibility allowed under the civil penalty provisions of the Motor Carrier Safety Act of 1984 has led to penalties imposed on motor carriers that in many cases are so low that they can be considered just part of the costs of doing business. (There are no minimum civil penalty amounts mandated by either the Hazardous Materials Transportation Act of 1975 or the Motor Carrier Safety Act of 1984.) Consequently, it is often less expensive for a motor carrier to pay the penalty than to comply rigorously with the safety regulations or hire a safety director to be able to comply with the safety regulations.

Nevertheless, each year, FHWA completes several enforcement cases that result in substantial penalty amounts for violations of the safety regulations. These actions are extremely important because many carriers otherwise either would not take the FHWA seriously or would not be convinced that they have a responsibility to comply with Federal safety regulations. Substantial penalty actions address both of these carrier shortcomings. However, there are many more cases in which substantial, meaningful, and appropriate penalty assessments are not levied.

Based on a review of several hundred enforcement cases recently brought by FHWA, as well as visits to several motor carriers during FHWA safety and compliance reviews, one fundamental conclusion stands out: *Even within the constraints of its current resources and the constraints imposed by the Motor Carrier Safety Act of 1984, FHWA could conduct a more vigorous enforcement program.* In order to accomplish this objective, FHWA would have to spend less time educating the motor carrier industry and more time bringing enforcement actions against the numerous motor carriers that FHWA knows are not in compliance with the safety regulations. FHWA would also need to abandon its "freebie" practice and begin to bring more enforcement actions as the result of its first contacts with motor carriers, hazardous materials shippers, and drivers. Improved enforcement authorities, such as higher maximum penalties and minimum penalty amounts could increase the vitality of FHWA's enforcement program. A more vigorous FHWA enforcement posture could encourage the efforts of more carriers to learn about their safety responsibilities and could increase their willingness to comply voluntarily with Federal safety requirements.

After it analyzed FHWA's program in 1986, the [DOT] Secretary's Safety Review Task Force incorrectly predicted that the new penalty provisions of the Motor Carrier Safety Act of 1984 should enable FHWA to make fines and penalties a meaningful deterrent to violating the regulations. As evidenced by a continuing high out-of-service rate for vehicles found during MCSAP inspections, and a high degree of noncompliance noted during both safety and compli-

ance reviews, it does not appear that this Act is having the impact predicted.[4]

One of the explicit purposes of the Motor Carrier Safety Act of 1984 was to assure increased compliance with FHWA's commercial motor vehicle safety regulations. It is doubtful that FHWA's practices of generally not fining companies on their first visit, significantly lowering penalty amounts at the final settlement table, and giving repeated warnings to companies is helping to achieve the intent of Congress. These practices are detrimental to the overall program and are probably not helping to reduce the number of deaths and injuries associated with commercial motor carrier transportation. Some might argue, however, that the current unhealthy financial condition of some carriers could not withstand a more vigorous FHWA enforcement posture.

MINIMAL OR PERHAPS INADEQUATE ATTENTION TO HAZARDOUS MATERIALS TRANSPORTATION SAFETY

There is overwhelming evidence that FHWA has not, and probably could not given its current resources, devote the level of attention to hazardous materials transportation that many would judge necessary. For example, even though there are over 1,200 motor carriers that are currently transporting hazardous materials and that have received an unsatisfactory safety rating by the FHWA, FHWA has not audited some of these motor carriers since the early 1980s; and furthermore, FHWA has not used the authority provided in the Motor Carrier Safety Act of 1984 to shut down any of these motor carriers. [(49 U.S.C.521(b)(5)(A)].[5] (If FHWA had judged the operation of any of these carriers to pose an imminent hazard, this Agency could have shut down these operations.) In addition, as indicated in table 7, the number of enforcement cases recommended for prosecution by FHWA against those charged with violations of the Federal hazardous materials transportation regulations has actually decreased in recent years. Likewise, the amount of penalties collected by FHWA from enforcement cases involving violations of the Federal hazardous materials transportation regulations has decreased in recent years. There is no evidence to suggest that overall hazardous materials compliance in the highway mode has increased.

There are literally thousands of shippers of hazardous materials that FHWA has jurisdiction over that have not been audited in years. Last fiscal year, FHWA safety specialists visited 525 shippers of hazardous materials, however, there are roughly another 25,000 shippers that are under its jurisdiction. Unlike the Federal Railroad Administration, a sister DOT agency with hazardous materials responsibilities, which has 34 hazardous materials inspectors who devote 80 percent of their time to shipper audits, FHWA does not have the staff needed to visit even a minimum number of shippers each year. The recent reorganization of FHWA's hazardous materials program and the establishment of a Hazardous Mate-

[4] U.S. Dept. of Transportation. Safety Review Task Force Report on the Federal Highway Administration's Motor Carrier Safety Program, Sept. 1986.
[5] As of Mar. 1989.

rials Program Manager in each of FHWA's regions may help improve the focus of these efforts.

Of course, FHWA has many other pressing problems that need to be addressed that result in much greater loss of life and property than does hazardous materials transportation. However, the catastrophic potential of these materials, as well as the public's concern over these shipments, is great and ever present.

SHORTCOMINGS OF FHWA'S SAFETY RATING PROCESS

Even though the Motor Carrier Safety Act of 1984 did not specifically state that FHWA must provide a safety rating to every interstate motor carrier, DOT has determined that all motor carriers under its jurisdiction must be rated. This has added to the workload problems of FHWA. During FY 1988 FHWA (nonmanagement) regional motor carrier safety personnel spent roughly 40 percent of their time obtaining information needed to determine safety ratings, which prioritizes motor carriers for follow-up compliance reviews.

Because of the high turnover rate of the motor carrier industry and the large number of new entrants, FHWA will be unable to achieve its original 1990 goal of assigning safety ratings to substantially all motor carriers under its jurisdiction. Currently, more than 120,000 motor carriers have not been rated. Even with increased assistance from the States, FHWA, without additional staff, will need to continue to devote much of its workload to the conduct of safety ratings for at least the next ten years if FHWA's current objectives for this program remain in effect. Congress might want to consider whether a safety rating program focused primarily on specific types of carriers and carriers with poor safety and compliance records would be more cost-effective.

A major purpose behind these ratings is to identify those motor carriers most in need of a follow-up compliance review or audit. There are certainly more cost-effective and performance-oriented means to determine auditing priorities. For example, SAFETYNET, the management information system that underpins MCSAP, could be used to determine (now on a State by State basis), later on a nationwide basis, which motor carriers are performing badly during roadside inspections. This information together with accident data compiled by both FHWA and the States could provide a list of motor carriers that need to be audited. This list might keep the FHWA enforcement force busy for at least the next ten years.

There are numerous other shortcomings with FHWA's safety rating process. The most important one is that the accuracy of many of the safety ratings are subject to question. About 44 percent of the motor carriers that are rated receive a conditional safety rating. Some of these carriers lack major safety management systems and could justifiably, under a different rating system, receive an unsatisfactory safety rating. FHWA has recognized some of the shortcomings of its rating process and currently plans to increase the percentage of carriers rated unsatisfactory. Furthermore, FHWA uses only three categories of safety ratings:

satisfactory, conditional, and unsatisfactory. Should a much more informative and accurate quantitative system be devised?

THE ISSUE OF PROGRAM PRIORITIES: IS FHWA'S ENFORCEMENT PROGRAM PROPERLY FOCUSED?

Much of the time FHWA has spent on safety ratings during the last few years has been devoted to small trucking companies, with less than 20 vehicles. Likewise, much of FHWA's enforcement activities has recently been devoted to small- and medium-sized carriers. The cost effectiveness and safety benefits of providing ratings to small trucking companies and conducting enforcement actions against so many of these small carriers remains uncertain, especially given other safety priorities that FHWA needs to address. Although subject to some uncertainties, data on accident rates and the number of reported accidents suggest that FHWA should be spending more time on larger carriers. Does Congress want FHWA to emphasize motor carriers with large fleets or should FHWA spend most of its time on smaller carriers?

Options Intended to Improve FHWA's Education and Enforcement Program

To create a more effective, vigorous Federal motor carrier safety program, three fundamental changes might be considered by Congress: 1) amendments to the Motor Carrier Safety Act of 1984 to provide for minimum penalty amounts for violations of the Federal motor carrier safety regulations and to raise the maximum penalty levels allowed; 2) the addition of at least 150 new safety specialists to FHWA's regional staff; and 3) increased funding for the MCSAP to increase the number of safety and compliance reviews conducted by State enforcement officials, thus reducing some of the workload on the FHWA.

In addition Congress may also wish to consider such options as to:

1. prohibit the transportation of certain hazardous materials by motor carriers that have an unsatisfactory safety rating;
2. require FHWA to take either an enforcement action or issue a citation with a civil penalty for any serious documentable violation of the Federal motor carrier safety or hazardous materials transportation regulations;
3. require FHWA to spend more of its time on enforcement than educational activities;
4. require FHWA to make use of its existing authority to shut down the operation of motor carriers that are judged to be imminently hazardous;
5. require FHWA to publish and widely distribute the names of all motor carriers that have received an unsatisfactory safety rating from the FHWA, but only after due process is afforded the carrier;
6. require FHWA to provide a quantitative or a more informative safety rating to motor carriers;
7. require all motor carriers subject to the jurisdiction of FHWA to register with the FHWA;

8. require FHWA to submit a bi-annual report to the Congress outlining the major accomplishments, resources, and problems facing the FHWA;

9. increase the grade level of senior, qualified, non-supervisory FHWA safety specialists working in the field from the GS–11 level to at least the GS–12 level and provide high cost-of-living differentials for FHWA employees assigned to certain areas;

10. require FHWA to focus its safety rating program on a specific group of designated carriers or carriers performing poorly on the road;

11. require identification of all motor carriers' vehicles;

12. create a separate Motor Carrier Safety Administration in the DOT, removing truck and bus safety responsibilities from the FHWA.

Each of these options is analyzed in detail in the last chapter of this report. As shown in table 18, the financial costs to the Federal Government or the Highway Trust Fund (in the case of the option pertaining to MCSAP) of improving FHWA's program are relatively modest. Companies and drivers failing to comply with specified Federal safety regulations, however, could be financially hurt if some of these options were implemented.

Of course, there is always the option of allowing the FHWA to continue to improve its own program at its own pace. Especially during the last three years, FHWA has demonstrated its ability to improve substantially its education and enforcement program with little congressional direction.

Perhaps, continued and occasional congressional oversight of FHWA's implementation of its motor carrier safety responsibilities is all that is needed. However, reliance solely on this option could prove risky, especially if FHWA cannot or does not address the major enforcement and workload problems that have been identified in this report. Of course, any changes to strengthen FHWA's program could affect the economic competitiveness of this industry.

INTRODUCTION

Preliminary FHWA data indicate that during 1987, 2815 people died and 27,450 were injured in accidents involving commercial trucks and buses subject to the Federal motor carrier safety regulations. According to the FHWA, the financial costs attributable to these deaths and injuries, and associated property damage have totaled several billion dollars each year for the past decade.[6] Table 1 presents historical data that show FHWA's commercial motor vehicle safety statistics. It is well known that these data, which depend on industry self-reporting, widely underestimate the consequences of commercial motor vehicle accidents.

The situation is even worse than these numbers suggest because these data deal with only motor carriers operating in interstate and foreign commerce. When all commercial buses and trucks are considered, the National Highway Traffic Safety Administration (NHTSA) reports that during 1987 some 5,600 people died in accidents involving trucks weighing 10,000 pounds or more and some 220 people died in accidents involved various types of buses. NHTSA also reports that 172 people died as a result of accidents involving trucks transporting hazardous cargo.[7, 8] (Not all of these vehicles covered in the NHTSA statistics are under the jurisdiction of the FHWA.) Table 2 presents historical data that show truck and bus fatality statistics as compiled by NHTSA.

It should be emphasized that even if every commercial motor carrier, driver and shipper stringently followed all of DOT's safety regulations, FHWA's ability to influence accident statistics would still be rather limited. Motor carriers share the streets and highways with the motoring public. Many of the truck-related fatalities, injuries and accidents cited in tables 1 and 2 were caused by the motoring public, not by the commercial motor carrier industry. The exact percentage of accidents involving commercial motor vehicles that were caused by the industry and those caused by the motoring public has not been determined. Because accidents are often caused by multiple factors and causation is sometimes difficult to assess, such a determination would be difficult.

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[6] U.S. Dept. of Transportation. FHWA. Commercial Driver Licensing Standards, Requirements and Penalties. Federal Register, v. 52, n. 104, June 1, 1987. p. 20574.

[7] Data in tables 1 and 2 do not account for changes in the number of miles driven or in the number of motor carriers. Year to year comparisons of accident rate data, which do include an exposure factor, are subject to serious question because of differences, in sampling techniques, differences in the type of carrier sampled, and validity of the data collected. On the other hand, table 2 does not depend on industry self-reporting of accidents or on industry-reporting of the number of millions of miles driven. Data in table 2 is from the Fatal Accident Reporting System (FARS), which is generally accepted as the most complete database for fatal accidents.

[8] This does not imply that the hazardous material caused the death; in most cases, it probably did not.

Table 1.—FHWA COMMERCIAL MOTOR CARRIER SAFETY STATISTICS

Year	1982	1983	1984	1985	1986	1987 [1]
Total Accidents	32,277	31,628	36,853	39,273	[1] 26,176	28,472
Fatalities	2,456	2,528	2,721	2,646	2,609	2,815
Injuries	26,117	26,692	29,149	28,988	[1] 25,092	27,450

Source: FHWA.
[1] Preliminary data.
[2] The drop in the total number of accidents reported during 1986 from previous years is probably primarily due to a substantial increase in the minimum or threshold damage amount that when reached triggers one of the requirements to report an accident to FHWA. On January 1, 1986 the reporting threshold for property damage accidents was increased from $2000 per accident to $4200 and was later raised. The definition of "bodily injury" for reporting criteria was also clarified and made more rigorous.

Table 2.—TRUCK AND BUS FATALITY STATISTICS

Year	1982	1983	1984	1985	1986	1987
Trucks 10,000 lbs. or greater	5,229	5,491	5,640	5,734	5,579	5,591
Buses	206	216	211	211	197	219
Total	5,435	5,707	5,851	5,945	5,776	5,810

Source: NHTSA FAR System.

Various studies in the literature have addressed the question of accident causation. There can be important limitations surrounding the use of some of these data. For example, the American Trucking Associations points out that the University of Michigan Transportation Research Institute (UMTRI) has estimated that in (fatal) car/truck accidents, the car driver is twice as often to be considered at fault; and in (fatal) car/tractor-trailer accidents, the car driver is three times as often to be considered at fault.[9] UMTRI researchers state, however, that:

> The reader is cautioned to remember, however, that fatal crashes constitute less than one percent of all police-reported crashes, so one might expect some substantial differences between the circumstances of the fatal crashes reported in the national FARS data and the vastly larger number of non-fatal crashes which can not be analyzed on a national basis. Fortunately, many states have developed computerized data bases for all of the police-reported accidents, and it is possible to obtain useful supplementary information on non-fatal accidents in the United States from an analysis of some of these state accident files.

These UMTRI investigators conclude:

> When one looks at responsibility data for all police-reported truck-car accidents in state files. (Michigan, Washington, Texas, and Pennsylvania), a different picture emerges. For all types of accidents responsibility was fairly evenly distributed between the truck drivers and car drivers, but again tractor-trailer drivers were somewhat less likely to be considered responsible than other truck drivers.[10]

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[9] Written communication from ATA, 1989.
[10] Wolfe, Arthur C. and Oliver M. Carsten. The University of Michigan Transportation Research Institute Study of Car/Truck Crashes in the United States. May 1982. Final Report. p. 2 and 67.

Nevertheless, the public's concern over truck and bus safety appears to be steadily increasing, and not surprisingly, so is interest over relevant Federal safety programs. The FHWA conducts two major programs that are designed to reduce the number of deaths and injuries from commercial motor vehicles by promoting compliance with existing safety regulations. This report deals primarily with the Federal educational and enforcement safety program that is implemented by some 303 Federal safety specialists and their program managers working in FHWA's regions.[11] These personnel constitute the heart of the Federal Government's truck and bus safety enforcement program. The other major FHWA-supported enforcement program, the Motor Carrier Safety Assistance Program (MCSAP), is analyzed in another CRS report.[12]

The Mission and Importance of FHWA's Motor Carrier Safety Program

The mission of FHWA's motor carrier safety program is to reduce the number of commercial vehicle accidents and the related societal costs.

> It shall be the policy of the FHWA to monitor and inspect periodically new and "satisfactory" rated motor carriers operating in interstate and foreign commerce to ensure that motor carriers are meeting the safety fitness standard, minimize the inherent risks in the transportation of passengers and property by heavy commercial vehicles; and reduce highway accidents resulting in fatalities, injuries, and property damage.[13]

The central focus of FHWA's program is the compliance activities of the motor carrier, including the hiring and safety management of its drivers and the maintenance and repair of its vehicles. FHWA seeks to promote activities that encourage drivers to operate their vehicles safely and in accordance with Federal regulations. Furthermore FHWA wants vehicles to be equipped with safety devices and equipment needed for safe operations. This program seeks to ensure that only drivers meeting federally-specified qualifications are operating safe commercial motor vehicles; that the safety records of drivers are reviewed periodically by the motor carrier; that motor carriers and drivers maintain required driver's record of duty status, commonly referred to as drivers' logs, indicating that hours-of-service regulations were complied with; that vehicles are periodically maintained; that drivers and mechanics interact to promote vehicle maintenance; and that accidents meeting specified criteria are reported to the FHWA. The FHWA program addresses most of the human and vehicle-related causes of commercial motor vehicle accidents.

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[11] FHWA sometimes refers to this program as the "National Motor Carrier Safety Program." As used in this report, the terms "FHWA's regions" or "FHWA's regional program" includes all field, division and nine regional offices.

[12] U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Motor Carrier Safety Assistance Program (MCSAP): Options Intended to Improve A Generally Successful and Cooperative Federal/State Partnership Promoting Truck and Bus Safety. 100th Cong., 2d Sess., Washington, U.S. Govt. Print. Off., June 1988.

[13] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures. Federal Register, v. 53, p. 50964.

FHWA's education and enforcement program is of fundamental importance to promoting commercial motor carrier safety. The accidents and poor inspection reports that are noted on the Nation's highways can often be traced back to the motor carrier's compliance procedures. The examination and improvement of these procedures is a central function of FHWA's education and enforcement program.

A statistical analysis has indicated a strong positive relationship between noncompliance with specific safety regulations and accident rates. The study concluded that safety can be enhanced by greater compliance with the Federal safety regulations.

> 1. The linkage shows that high accident rates are not attributable to adverse environmental conditions surrounding accidents but primarily to behavioral factors representing operating patterns, policies, and practices of the companies. These include particularly the selection, training, and control of drivers, along with compliance with Bureau of Motor Carrier Safety Regulations relating to drivers and vehicles. These indications of regulation's benefits, along with the strong role of duty hours and drivers' age as safety factors, clearly establish the vital safety role of the promulgation and enforcement of standards of vehicle maintenance. The importance of safety controls contrasts sharply with the insignificant role of adverse environmental factors in accident performance.
>
> 2. The effectiveness of the supporting BMCS regulations depends on the strength of the enforcement effort and on the associated extent of company compliance. The linkage of accident frequency with causal factors is especially strong for driver qualifications and driving hours and for vehicle condition. Accordingly, especially effective enforcement and compliance is mandatory for parts 391, 395, and 396.[14] [Driver Qualifications, Hours of Service and Vehicle Maintenance regulations.]

Another study conducted by FHWA also indicated that improvements in a motor carrier's compliance with the Federal motor carrier safety and hazardous materials transportation regulations are directly related to improvements in the accident record of the motor carrier.[15]

The 303 safety investigators and program managers working for the Office of Motor Carriers formerly the Bureau of Motor Carrier Safety, in the Federal Highway Administration (FHWA) enforce Federal laws and regulations affecting the safe operation of specified motor carriers and hazardous materials shippers. FHWA specialists primarily conduct their reviews at the principal place of business of the motor carrier—which is a place that the motor carrier designates where its safety records are kept, frequently the headquarters of the company or its major terminal.

Motor carriers and their drivers and agents who are under the jurisdiction of the FHWA are subject to some 1400 safety requirements. A brief summary of these regulations is presented in table

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[14] TMA Corporation, Inc. Final Report. Safety Program Effectiveness Evaluation Methodologies. June 20, 1983. p. vi-vii.

[15] U.S. Dept. of Transportation. FHWA. Report to Congress. Study of Safety Performance of Commercial Motor Vehicles Pursuant to Section 218 [of the] Motor Carrier Safety Act of 1984, Oct. 1987. p. 31.

3. The safety management procedures that must be set up to comply with these regulations can be time consuming but are relatively inexpensive. Many of the regulations require actions that a practical, safety- and cost-conscious businessperson would probably want to implement even in the absence of a Federal requirement.

Table 3.—SUMMARY OF FHWA MOTOR CARRIER SAFETY REGULATIONS IN TITLE 49 OF THE CODE OF FEDERAL REGULATIONS [16]

Part 325: Compliance With Interstate Motor Carrier Noise Emission Standards—Establishes procedures for inspection, surveillance, and measurement of motor vehicles to determine compliance with noise emission standards.

Part 350: Commercial Motor Carrier Safety Assistance Program—Establishes guidelines for the development and implementation of State programs for the enforcement of Federal motor carrier safety regulations. Conditions, objectives, and funding of the program are also detailed.

Part 383: Commercial Driver's License Standards; Requirements and Penalties—Requires that drivers have a single commercial motor vehicle driver's license, and that drivers provide employers with information about previous employment and previous violations and suspensions. Also prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle and sets penalties for violations.

Part 385: Safety Ratings—Prescribes procedures for issuing motor carriers ratings of satisfactory, unsatisfactory, or conditional. Also lists factors to be considered in determining a safety rating and sets procedures for notification and review.

Part 386: Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings—Authorizes the Associate Administrator for Motor Carriers of the Federal Highway Administration (FHWA) to determine whether a motor carrier or person subject to the jurisdiction of FHWA has failed to comply with motor carrier safety regulations. Also authorizes the Associate Administrator to compel compliance, issue a civil penalty, or both.

Part 387: Minimum Levels of Financial Responsibility for Motor Carriers—Establishes minimum level of financial responsibility required by motor carriers and mandates that motor carriers must have proof of insurance or authorization from the Interstate Commerce Commission in order to operate.[17]

Part 388: Cooperative Agreements with States—Authorizes any State to enforce FHWA safety regulations, and establishes terms of eligibility, cancellations, exchange of information, and requests for assistance.

Part 389: Rulemaking Procedures—Federal Motor Carrier Safety Regulations—Establishes rulemaking procedures that apply to the issuance, amendment, and revocation of Federal Motor Carrier Safety Regulations.

Part 390: Federal Motor Carrier Regulations, General—Establishes definitions and applicability of regulations. (For list of exemptions, see table 3-5.)

Part 391: Qualifications of Drivers—Establishes minimum qualifications for motor carrier drivers (i.e., to qualify to drive a commercial motor vehicle, part 391 states that a person must be at least 21 years old, have a currently valid commercial motor vehicle operator's permit, have prepared and furnished the motor carrier that employs him with a list of violations, have successfully completed and been issued a certificate of driver's road test or an equivalent). In addition, part 391 establishes minimum duties of motor carriers with respect to the qualifications of their drivers, including drug testing.[18]

Part 392: Driving of Motor Vehicles—Establishes driving practices in cases of railway grade crossings, drawbridges, and hazardous driving conditions. Also sets regulations for use of lighted lamps and reflectors, accidents and license revocation, emergency signals, fueling precautions, and specifies prohibited practices.

Part 393: Parts and Accessories Necessary for Safe Operation—Establishes requirements for motor carriers including lighting devices, reflectors and electrical equipment, brakes, glazing and window construction, fuel systems, coupling devices and

[16] Those affected by these regulations should not rely on this simplified and therefore incomplete summary, but should consult the regulations directly.

[17] Private and exempt carriers are not subject to ICC authority.

[18] There is also a physical examination required.

towing methods, miscellaneous parts and accessories, emergency equipment, and protection against shifting or falling cargo.

Part 394: Notification and Reporting of Accidents—Defines reportable accidents and establishes duties of motor carriers to make reports and keep records of accidents that occur during their operations.

Part 395: Hours of Service of Drivers—Establishes hours-of-service regulations for drivers, prohibiting driving periods of more than 10 hours after 8 consecutive hours off duty, for any period after having been on duty for 15 hours after 8 consecutive hours off duty, or more than 60 hours in any consecutive 7 days. Regulations are also set for recording driver duty status.[19]

Part 396: Inspection, Repair, and Maintenance—Establishes requirements for the inspections, repair, and maintenance of commercial motor vehicles.

Part 397: Transportation of Hazardous Materials; Driving and Parking Rules—Establishes requirements of transportation of hazardous materials including special parking, routing, tire, and smoking regulations.[20]

Part 398: Transportation of Migrant Workers—Establishes regulations governing the transportation of migrant workers for more than 75 miles when crossing the boundary of another State, a U.S. territory, or another country.

Part 399: Employee Safety and Health Standards—Establishes step, handhold, and deck requirements that apply to drivers of trucks and truck-tractors, having a high profile cab-over-engine configuration for entrance, egress, and back of cab access, manufactured on or after September 1, 1982.

Source: Office of Technology Assessment, based on Title 49 of the Code of Federal Regulations.

When the entire industry is considered, the degree of noncompliance with these Federal safety regulations is high. A FHWA safety investigator can audit almost any motor carrier and find problems with its compliance practices. Although Federal regulations do not require it, many motor carriers do not even have a copy of the safety regulations. Some motor carriers do not even know that they are subject to the regulations.

Diversity of the Industry Regulated by FHWA

The industry regulated by FHWA—primarily the commercial motor carrier industry engaged in interstate and foreign commerce—is diverse. Its wide variety is expressed in many ways, such as in the number of vehicles in a carrier's operations, the nature of the business of the carrier, and the type of operations, e.g., whether it is for-hire or a private carrier. The degree of compliance with the safety regulations also varies widely, ranging between almost no compliance to safety systems far exceeding the Federal standards, which constitute a minimum or floor level. Much of the industry is composed of small operations with six or less vehicles. There are however, some multi-billion dollar operations with thousands of vehicles in their fleets. Because of these wide variations, generalizations regarding this industry must be carefully scrutinized.

Purpose of the Report

The purpose of this report is threefold: 1) to analyze the progress FHWA has made towards implementing an effective motor carrier safety program, focusing on its educational and enforcement activities; 2) to consider areas of concern regarding FHWA's implemen-

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[19] The 60 hour limit applies to all time spent on duty, driving and non-driving time.

[20] Some other hazardous materials transportation regulations affecting motor carrier operation are found in other parts of Title 49 CFR.

tation of this program and problems that FHWA faces when trying to implement its program; and 3) to outline options that Congress or the Administration might consider and that are designed to promote the effectiveness and efficiency of FHWA's program.

This report addresses such interrelated questions as:

1. How do FHWA's educational and enforcement programs promote motor carrier safety?
2. Is the FHWA conducting a vigorous and meaningful enforcement program that is effectively encouraging the motor carrier industry to comply with Federal safety regulations?
3. What is the organizational structure and funding level for this program?
4. Are FHWA's resources sufficient to deal effectively with the motor carrier industry and the safety problems associated with this industry?
5. Is FHWA's investigative force focusing on the highest-risk carriers?
6. How does FHWA's regional safety effort interact with the Motor Carrier Safety Assistance Program?
7. What is the status and nature of the FHWA's safety and compliance review program? What other innovative approaches is the FHWA using to promote motor carrier safety? and
8. What options might the Congress or the Administration consider to improve FHWA's motor carrier safety educational and enforcement program?

This report provides insights into, and answers to, these and other questions related to the implementation of the FHWA safety program.

First, the organizational structure and resources for FHWA's education and enforcement program are detailed. Next, FHWA's education and enforcement philosophies and procedures are outlined. Statistics on the accomplishments and tasks of the FHWA safety specialists are presented. The various safety programs of the FHWA are then reviewed. The relationship of the FHWA regional program to that of the Motor Carrier Safety Assistance Program is then reviewed. Throughout the report, various concerns regarding the implementation of FHWA's program are considered. Finally, an analysis of various options that are intended to improve the effectiveness and efficiency of FHWA's program and options to change the basic legislative authorities or direction of this program are presented.

Scope and Limitations and Research Methodology

The analysis presented in this report is limited by several factors, including the fact that:

—FHWA's education and enforcement program is an evolving, rapidly changing program and thus difficult to analyze;
—relatively little information of an evaluative nature has been compiled recently on this program;
—numerous spurious or intervening variables, such as the effects of partial economic deregulation and an increased number of industry participants and industry miles driven, are affecting

the same safety statistics that FHWA's efforts also are affecting.

Nevertheless, this report seeks to offer insights, observations, and an objective perspective on the effectiveness, accomplishments and problems associated with FHWA's motor carrier education and enforcement program.

This report does not consider the regulatory development components of FHWA's program or its interactions with the National Highway Traffic Safety Administration. It does not discuss extensively FHWA's information and management computer systems that support this program.

The analysis presented is based on: (1) extensive interviews conducted with officials of various State governments, industry and enforcement groups, the staff of the National Transportation Safety Board and the FHWA; (2) first-hand observations of various FHWA activities such as compliance reviews, complaint investigations, and safety reviews; and (3) extensive reviews of various FHWA training documents, policy manuals, and program guidance memorandum.[21] Numerous discussions were held with FHWA personnel working in FHWA regions I, III and IV.

Previous Reviews of the FHWA Safety Program

During the last ten years, various aspects of FHWA's motor carrier safety program have been reviewed by congressional committees, the Office of Technology Assessment, the General Accounting Office, the Congressional Research Service, and DOT itself. Each of these studies has found major areas of concern; some studies also have discussed accomplishments of FHWA.

In its most recently published analysis of the FHWA program (September 1986), the Secretary of Transportation's Safety Review Task Force stated: "The consensus conclusion of most of these studies was that the program was largely ineffective for a number of reasons—inadequate staffing; inadequate program planning and uniformity among the regional offices; inadequate and inconsistently applied enforcement sanctions that did not serve as a deterrent to safety violations; and insufficient data and analysis on which to base the safety program." [22] The Task Force found that the staff was too small and the program too poorly planned to have more than a minimal impact on the motor carrier industry. They concluded that FHWA required significant increases in its resources and in MCSAP and a complete overhaul based on improved utilization of resources.

This CRS report points out that the FHWA has undertaken many efforts to begin to address these and similar concerns, but these and new problems or concerns still affect the operations of this program.

Congressional committees are starting to focus more intensively on the effectiveness and efficiency of FHWA's safety program. For

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[21] Industry groups contacted include: American Trucking Associations, Inc., National Private Trucking Association, National Tank Truck Carriers, Inc., and Hazardous Materials Advisory Council.

[22] U.S. DOT. Safety Review Task Force Report on the Federal Highway Administration's Motor Carrier Safety Program, p. 1.

example, in the Department of Transportation and Related Agencies Appropriation Bill, 1989 (Senate Report 100-411), the Senate Appropriations Committee perceived that FHWA has made minimal progress in improving the quality, quantity, scope, and nature of its enforcement efforts. The Committee expected "to see an increase in the total amount of civil penalties collected; enforcement productivity to increase; and a strict enforcement program that eventually promotes voluntary compliance." [23]

This CRS report analyzes the progress, or lack thereof, that FHWA has made in accomplishing this objective.

[23] U.S. Congress. Senate. Committee on Appropriations. Department of Transportation and Related Agencies Appropriation Bill, 1989. Report, 100th Cong., 2d Sess., Washington, U.S. Govt. Print. Off., 1988. p. 70.

LEGISLATIVE AUTHORITY, ORGANIZATIONAL STRUCTURE AND RESOURCES FOR SAFETY [24]

This section presents an overview of FHWA's motor carrier safety program, focusing on its resources available to conduct educational and enforcement activities. Selected laws underpinning FHWA's activities are listed; the administrative structure and personnel resources available for this program as well as its costs are summarized, and the job of the FHWA safety specialists who constitute the heart and soul of this safety program, is described. A brief description of how FHWA spends its time and allocates its resources is also presented.

Selected Legal Authorities and Jurisdiction

The primary Federal office responsible for conducting a national program governing the operation of specified commercial motor carriers and highway shippers of hazardous materials is the Office of Motor Carriers (OMC) within the FHWA. The field operation of OMC is known as the Office of Motor Carrier Safety. This safety organization deals primarily with carriers and drivers involved in interstate or foreign commerce and certain types of hazardous materials transportation. Selected statutory authorities and jurisdictional responsibilities that govern FHWA's motor carrier safety functions are outlined in table 4.

FHWA requires that motor carriers transporting passengers or property (cargo) in interstate or foreign commerce comply with the Federal motor carrier safety regulations found in 49 Code of Federal Regulations (CFR) 300–397, and 399, the interstate motor carrier noise emission compliance regulations found in 49 CFR 325, and the minimum levels of financial responsibility regulations for motor carriers found in 49 CFR 387. FHWA's safety regulations . . . apply to all private and for-hire carriers performing interstate or foreign commercial operations, as well as their drivers and vehicles used in interstate or foreign commerce. The noise regulations are applicable to vehicles operated by carriers who conduct operations in interstate commerce. Minimum levels of insurance are prescribed for the following: (1) interstate transportation of nonhazardous property; (2) interstate and intrastate transportation of in-bulk hazardous materials, substances and wastes; and (3) interstate transportation of any quantity of hazardous materials, substances and wastes. These regulations are designed for your protection and the protection of lives and property of other highway users. The regulations have the force of Federal statutes and heavy

[24] FHWA's regulations and policies change frequently. Those affected by FHWA's regulations or policies should consult directly with FHWA and not rely upon this report.

penalties are provided for those carriers and their officers, agents, drivers and other employees who fail to comply.[25]

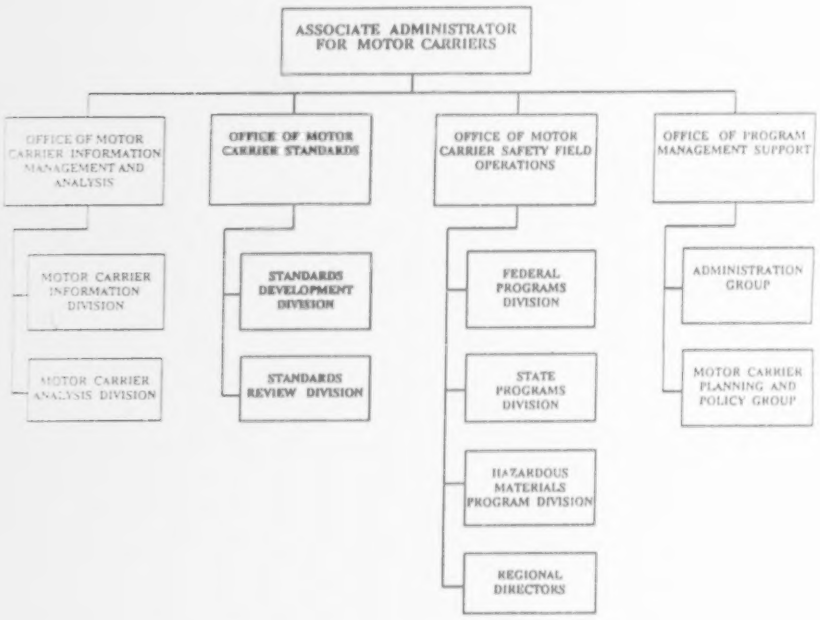
For more than 25 years, the FHWA has also had the authority to regulate the safe transportation of migrant workers. In recent years, FHWA has devoted little attention to the enforcement of these regulations, because recently there has been little evidence of noncompliance, according to FHWA. Likewise, requirements have been established for the enforcement of the noise emissions standards. This is a regulatory responsibility that currently is only enforced by FHWA when a complaint is filed.

Commercial driver license requirements apply to both interstate and intrastate drivers of certain motor vehicles.

Organizational Structure and Resources for Safety

The organizational structure of FHWA's motor carrier safety program is illustrated in figure 1. The three organizational echelons or levels of this program are headquarters, the regional staff headed by a Regional Director, and division staff headed by an Officer in Charge (OIC) or State Director (SD).

FIGURE 1. FHWA Motor Carrier Operations


ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS
OFFICE OF MOTOR CARRIER INFORMATION MANAGEMENT AND ANALYSIS
OFFICE OF MOTOR CARRIER STANDARDS
OFFICE OF MOTOR CARRIER SAFETY FIELD OPERATIONS
OFFICE OF PROGRAM MANAGEMENT SUPPORT
MOTOR CARRIER INFORMATION DIVISION
MOTOR CARRIER ANALYSIS DIVISION
STANDARDS DEVELOPMENT DIVISION
STANDARDS REVIEW DIVISION
FEDERAL PROGRAMS DIVISION
STATE PROGRAMS DIVISION
HAZARDOUS MATERIALS PROGRAM DIVISION
REGIONAL DIRECTORS
ADMINISTRATION GROUP
MOTOR CARRIER PLANNING AND POLICY GROUP

[25] U.S. Dept. of Transportation. FHWA. Form MCS-40.

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TABLE 4. Statutory Authority for Office of Motor Carriers Safety Activities

1. Authority to regulate the qualifications and maximum hours of service of employees and safety of operations and equipment of common carriers, contract carriers, private carriers of property and carriers of migrant workers. 49 U.S.C. 3102.

2. Authority to establish minimum Federal safety standards for commercial motor vehicles. Section 206 of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, 98 Stat. 2829,2834.

3. Authority to establish an annual inspection requirement for commercial motor vehicles. Section 210 of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, 98 Stat. 2829, 2839.

4. Authority to investigate complaints. Section 212 of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, 98 Stat. 2829, 2941.

5. Authority to administer the regulations issued under the above section including the authority to inspect carrier's vehicles and records. 49 U.S.C. 504; impose civil and criminal penalties 49 U.S.C. 526, Pub. L. 97-449 (January 12, 1983).

6. The above powers have been transferred to the Federal Highway Administration, from the Department of Transportation. 49 U.S.C. 104(c); 49 CFR 1.48.

7. Authority to enforce hazardous materials regulations including inspection power. Hazardous Materials Transportation Act - 49 U.S.C. 1801 et. seq.; see 49 CFR 1.48

Footnote (a) pertaining to hazardous substances. Section 311 of the Clean Water Act - 33 U.S.C 11321 (specifies Coast Guard and the Federal Maritime Commission) (may refer to above FWPCA, (DOT enforces 49 U.S.C.1809)). CERCLA and

Footnote (b) pertaining to Section 3003 of the Resource Conservation and Recovery Act Authority to enforce the regulations the transportation of hazardous wastes.

TABLE 4. Statutory Authority for Office of Motor Carriers Safety Activities--cont'd.

(coordinate, DOT re: hazardous waste standards

(Federal enforcement EPA 42 U.S.C. 6298

(DOT enforces - 49 U.S.C. 1809)).

8. Authority to issue and enforce noise regulations. Noise Control Act - 41 U.S.C. 4917.

9. Authority to regulate the minimum levels of financial responsibility for for-hire motor carriers of property (non-hazardous) involved in interstate or foreign transportation and for private and for-hire motor carriers transporting hazardous materials in intrastate, interstate, or foreign commerce in accordance with the provisions of Section 30 of the Motor Carrier Act of 1980, as amended, and further to implement and enforce the standards set forth. 49 U.S.C. 10927 note; Sec 108(b)(5), Pub L. 96-510; and Sec. 406,Pub. L. 97-424.

10. Authority to set limits of liability and requirements for evidence of financial responsibility for for-hire motor carriers of passengers involved in interstate or foreign commerce. Bus Regulatory Reform Act of 1982 - 49 U.S.C.10927 Note; Sec. 18, Pub. L. 97-261.

11. Authority to investigate, consider, and to recommend recipients of the award of life-saving medals. The Medal of Honor Act - 49 U.S.C.1201 - 1203.

12. Authority to make grants to States for the development or implementation of programs for the enforcement of Federal regulations or compatible State regulations applicable to commercial motor vehicle safety. Sec.401-404, Surface Transportation Assistance Act of 1982 -Pub. L. 97-424 (January 6, 1983).

13. Authority to establish minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, or trailers. Sec. 414, Surface Transportation Assistance Act of 1982 - Pub. L. 97-424 (January 6, 1983), 49 U.S.C. 2314.

14. Authority to establish requirements for commercial driver's license. Commercial Motor Vehicle Safety Act of 1986. P.L. 99-570 (Oct. 27, 1986).

15. Removal of commercial zone exemption - Truck and Bus Safety and Regulatory Reform Act of 1988.

TABLE 4.—MOTOR CARRIER SAFETY STATUTORY AUTHORITIES

Question. Who is subject to regulation by the Federal Highway Administration?

Answer. [Generally stated, subject to limited exceptions.]

1. The Federal Highway Administration (FHWA) has general authority to regulate the qualifications and maximum hours of service of safety affecting employees of, and the safety of operation and equipment of, interstate and foreign, for-hire and private motor carriers (except private transportation of passengers) (no weight limit in vehicles). The Motor Carrier Act of 1935 (also known as Part II of the Interstate Commerce Act), 49 Stat. 546, ch. 498 (1935) (codified in relevant part as amended at 49 U.S.C. chs. 5, 31 (1982 & Supp. III 1985)).

2. Generally the same as #1 above (and including private transportation of passengers) (applicable to vehicles with a GVWR of 10,001 or more pounds, designed to transport more than 15 passengers, or used to transport hazardous materials in a quantity requiring placarding). The Motor Carrier Safety Act of 1984, Pub. L. 98-554, title II, 98 Stat. 2834 (1984) (codified at 49 U.S.C. app. § 2501-2520 (Supp. III 1985)).

3. The FHWA has authority to prescribe minimum levels of financial responsibility for motor carriers:

a. For for-hire motor carriers of non-hazardous property in interstate or foreign commerce, and for for-hire and private motor carriers of hazardous materials in intrastate, interstate, and foreign commerce (not applicable to vehicles with a GVWR of less than 10,000 pounds, unless the vehicle is used to transport any quantity of Class A or B explosives, any quantity of poison gas, or a large quantity of radioactive material in interstate or foreign commerce). Section 30 of the Motor Carrier Act of 1980, Pub. L. 96-296, § 30, 94 Stat. 793 (1980) (codified as amended at 49 U.S.C. § 10927 note (1982 & Supp. III 1985)).

b. For for-hire motor carriers of passengers in interstate or foreign commerce. Section 18 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1102 (1982) (codified at 49 U.S.C. § 10927 note (1982 & Supp. III 1985)).

4. The Department of Transportation has authority to regulate the transportation of hazardous materials (regulatory authority delegated to RSPA; FHWA enforces as to motor carriers). This authority included for-hire and private carriers, and intrastate, interstate, and foreign commerce, although the intrastate authority has been largely unexercised by the Department. The Hazardous Materials Transportation Act, Pub. L. 93-633, 88 Stat. 2156 (1975) (codified as amended at 49 U.S.C. app. § 1801-1813 (1982 & Supp. III 1985)).

5. The FHWA has the authority to prescribe requirements for drivers of commercial motor vehicles in intrastate, interstate, and foreign commerce, for-hire or private, to obtain a single, classified drivers license. (Applicable to commercial motor vehicles with a GVWR of 26,001 or more pounds (unless the Secretary reduces that number to 10,001 or more pounds), designed to transport 15 passengers or more, or is used to transport hazardous materials.) The FHWA can also disqualify intrastate, interstate, and foreign driv-

ers from operating commercial motor vehicles if they commit certain traffic violations or violations of the alcohol or drug provisions of the Act. Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, October 27, 1986.

PENALTY AUTHORITY

1. Civil and criminal penalties for violations of regulations issued under 49 U.S.C. § 3102, the Motor Carrier Safety Act of 1984, and certain sections of the Commercial Motor Vehicle Safety Act of 1986: 49 U.S.C. § 521 (1982 & Supp. III 1985).

2. Criminal penalties for certain reporting and recordkeeping violations: 49 U.S.C. § 522 (1982).

3. General criminal penalties for violations of regulations issued under 49 U.S.C. § 3102, the Motor Carrier Safety Act of 1984, and certain sections of the Commercial Motor Vehicle Safety Act of 1986: 49 U.S.C. § 526 (1982 & Supp. III 1985).

4. Civil penalties for violations of the financial responsibility requirements: Section 30(d) of the Motor Carrier Act of 1980, for carriers of property, and section 18(e) of the Bus Regulatory Reform Act of 1982, motor carriers of passengers, both codified at 49 U.S.C. § 10927 note (1982 & Supp. III 1985).

5. Civil and criminal penalties for violations of the Hazardous Materials Regulations: 49 U.S.C. app. § 1809 (1982).

The headquarters staff sets the broad policy directives, as well as the tone and scope of the national program. At headquarters, FHWA has about 15 employees working on policy-setting activities pertaining to its motor carrier safety education and enforcement program.

FHWA's Regional Directors basically manage the FHWA field programs of the approximate four to eight States in their assigned regions. Regional Directors spend considerable time on personnel and administrative matters, coordination with senior managers in headquarters, the resolution of various operational problems, and the final settlement of enforcement cases. The Federal Program Manager in each region run much of the day to day operations of FHWA's educational and enforcement activities in their respective regions. FHWA is reactivating a Hazardous Materials Transportation Program Manager in each of the regions.

Officers in Charge (OIC) or State Directors (SD) manage the FHWA activities in the States. Based on the guidance provided by its Regional Directors and FHWA's headquarters tailored to local requirements, the OICs/SDs direct the type and number of enforcement activities to be completed in their individual States.

Table 5 indicates the size and distribution of the OMC field staff, the FHWA safety specialists and their managers who work in FHWA's regional and division offices.

TABLE 5. OMC Field Staff

STATE	1983	1984	1985	1986	1987	1988
Connecticut	2	1	2	2	3	3
Maine	2	1	2	-	3	3
Massachusetts	5	5	5	4	5	6
New Hampshire	1	1	1	1	2	1
New Jersey	5	5	4	4	8	7
New York	8	9	9	9	16	15
Rhode Island	1	1	-	1	1	1
Vermont	2	2	2	2	4	4
Puerto Rico	-	1	-	-	1	1
TOTAL	26/4	26/4	25/3	25/2	43/3	41/4
Delaware	1	1	1	1	1	2
Maryland	3	3	3	3	4	4
Pennsylvania	9	8	7	7	12	14
Virginia	6	6	4	3	4	6
West Virginia	2	1	1	1	3	3
Dist. of Columbia	-	-	-	-	-	-
TOTAL	21/5	19/3	16/2	15/3	25/3	29/4
Alabama	3	4	3	2	5	5
Florida	3	3	4	3	8	7
Georgia	3	3	3	3	7	6
Kentucky	2	2	2	2	5	8
Mississippi	2	2	2	2	3	4
North Carolina	3	2	3	3	5	8
South Carolina	2	2	2	2	4	4
Tennessee	3	3	3	3	7	9
TOTAL	21/4	21/4	22/3	20/3	44/3	51/4
Illinois	3	4	4	5	8	8
Indiana	3	3	3	3	3	8
Michigan	3	3	3	3	5	7
Minnesota	3	3	3	3	5	6
Ohio	6	6	5	4	4	7
Wisconsin	3	3	3	3	4	7
TOTAL	21/5	22/5	21/4	21/2	29/3	43/4
Arkansas	1	2	2	-	3	3
Louisiana	1	2	2	2	3	5
New Mexico	1	2	1	1	1	2
Oklahoma	1	2	1	-	3	4
Texas	8	7	8	8	12	13
TOTAL	12/5	15/5	14/3	11/2	22/4	27/4
Iowa	2	2	2	3	6	6
Kansas	3	3	3	2	5	4
Missouri	3	3	3	3	7	7
Nebraska	2	1	1	2	3	3
TOTAL	15/2	9/4	9/3	10/3	21/4	20/4
Colorado	2	2	3	3	2	6
Montana	2	2	2	2	2	2
North Dakota	1	2	1	1	1	2
South Dakota	1	1	1	1	1	2
Utah	2	2	2	2	2	3
Wyoming	2	2	2	2	1	2
TOTAL	10/2	11/4	11/3	11/2	9/3	17/4
Arizona	2	2	1	1	1	3
California	7	7	7	6	8	16
Hawaii	1	1	1	1	1	1
Nevada	3	2	2	1	1	3
TOTAL	15/1	12/2	11/3	9/3	11/3	23/4
Alaska	1	1	1	1	1	1
Idaho	2	1	2	2	3	4
Oregon	3	3	3	4	3	5
Washington	3	3	3	3	6	6
TOTAL	9/2	8/4	9/4	10/3	13/3	16/4
GRAND TOTAL	150/30	143/35	138/28	132/23	217/29	303/36

Source: FHWA

Note: Numerator = Total Professional Staff in Field.
Denominator = Total of Professionals in Regional Headquarters Office.

Much of the workforce of FHWA is rather junior in seniority. More than one-half of the FHWA field workforce have been FHWA employees for less than three years. Many of the senior or more experienced investigators have taken management jobs, such as those of the Officer in Charge, State Director, Hazardous Materials Program Manager, Federal Program or State Program Specialist, Federal or State Program Manager, and jobs in headquarters. Because of a position downgrading ordered by the Office of Personnel Management (which is discussed in a later section), a senior, non-supervisory FHWA safety specialist (investigator) cannot advance beyond the GS–11 level and continue to dedicate most of his/her time towards conducting enforcement actions.[26] FHWA currently employs about 33 of these senior level, GS–11 safety specialists. The remaining safety specialists working out in the field on a daily basis are primarily GS–9 and below.

During the last three fiscal years, FHWA has trained: three classes of new safety investigators during FY 1986, five classes during FY 1987, and one class during FY 1988. Each class started with about 25 new safety specialist trainees. Because of low pay, rather routine work during the initial few years at FHWA, the demand to travel, and inability to pass necessary training courses, the turnover rate of these new employees has been substantial, roughly 30 percent. Of the 233 trainees that entered the training program, 203 completed the course work successfully. At the end of FY 1988, there were approximately 165 junior-level employees still remaining of which some 160 were working in the regions conducting primarily safety reviews for FHWA. During FY 1989 these "new hires" will be devoting an increasing percentage of their time to conducting compliance reviews. (Safety and compliance review programs are discussed in a later chapter of this report.) This activity will allow them to be considered for promotion to the GS–11 level.

These junior level FHWA safety specialists represent the future of FHWA's motor carrier safety program. It takes a long time to train and develop a junior-level safety specialist into an experienced senior specialist.[27] One option designed to increase the likelihood that these junior specialists will continue to stay with FHWA as safety specialists working in the field is presented in the last chapter of this report.

Job Assignments of FHWA's Motor Carrier Safety Employees

FHWA has many "chiefs" and relatively few experienced and trained "warriors," FHWA's personnel resources are distributed as follows:

—15 Managers or administrative headquarters personnel who do not conduct safety audits;
—9 Regional Directors who do no field work and generally only become involved in the settlement of enforcement cases;
—9 Federal Program Managers who rarely do their own field work, but do almost all of the processing of enforcement cases;

[26] Personal communication with FHWA staff, 1988.
[27] Personal communication with FHWA staff, 1988.

—9 Hazardous Materials Transportation Program Managers who do some investigative work, frequently in relationship to training new investigators;
—9 State Program Managers who do not conduct field investigative work other than to help train State enforcement officers;
—23 State and Federal Program Specialists who are primarily managers who do little of their own field investigative work but do train others;
—50 Officers in Charge or State Directors most of whom do little field work, but spend most of their time processing and coordinating the field activities of staff.[28]

Thus, out of some 318 total professional staff [15 in headquarters and 303 in the regions] working in FHWA's educational and enforcement program, approximately 124 are unlikely to be out in the field on a full-time basis pursuing enforcement actions. These 124 managers must develop and oversee programs specific to their geographical areas; they do not have the time to be full-time investigators. The duties performed by these managers allow the field investigative staff more time to devote to carrier contact. Out of the remaining 194 employees, about 160 are primarily junior-level, relatively new employees who, in many cases, are just beginning to pursue enforcement cases involving violations of safety regulations on their own. Some of these new employees need frequent supervision in the handling of enforcement actions involving safety violations. FHWA is making a definitive effort to have junior-level employees begin to conduct compliance reviews.

Safety Tasks and Other Jobs of the FHWA Safety Specialists

In order to understand better the administrative structure, workload situation, and various policy issues raised in this report, it is helpful to provide a brief explanation of the scope and nature of the job of FHWA's safety specialist. These personnel conduct FHWA's education and enforcement program in the field. (A much more detailed discussion and analysis of the activities conducted by these FHWA's employees is presented in a later chapter entitled "Programmatic Aspects of FHWA's Motor Carrier Safety Field Operations.")

The job of an experienced FHWA safety specialist is multi-faceted, sometimes tedious, frequently challenging, and often difficult. FHWA safety specialists must understand and enforce more than several hundred pages of fairly detailed Federal safety regulations. Among the many tasks of these safety officials are:

—the conduct of safety reviews to ascertain in a rather quick manner the safety systems that a motor carrier has in place to comply with the safety regulations; [29]
—the conduct of compliance reviews that audit a motor carrier's and/or hazardous materials shipper's compliance with specific safety regulations;

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[28] Some Officers in Charge, those in States or districts that have no supporting personnel, devote considerable time conducting audits of motor carriers. There are relatively few OICs that fit this description.

[29] The various terms such as "safety and compliance reviews" are discussed in a later chapter of this report.

—the development and preparation of enforcement actions taken against those who have allegedly violated the Federal hazardous materials transportation or the motor carrier safety regulations;
—the conduct of investigations into complaints made against specific motor carriers;
—the presentation of safety seminars at various industry meetings; and
—the conduct of accident investigations.

Although the percentage of time varies, all FHWA safety investigators working in the field serve as public safety consultants. At the end of a safety or compliance review, FHWA safety specialists frequently provide educational materials or discuss specific actions that the motor carrier should take to improve its level of compliance.[30] Sometimes, FHWA investigators receive calls from new motor carriers asking for technical assistance or explanations of specific requirements before they begin their operations. FHWA investigators frequently give out their telephone numbers and advise motor carriers that they can be called upon for future assistance.

FHWA safety specialists regularly explain how compliance with the Federal motor carrier safety or the hazardous materials transportation regulations can help a motor carrier. Not only can compliance promote safety, but it may also provide for legal benefits and cost control opportunities for the motor carrier. For example, FHWA employees might point out that good vehicle maintenance records might be used in court to establish the fact that a motor carrier tried to be responsible for the safe condition of its vehicles. FHWA officers may also point out that good vehicle maintenance records can indicate the need for routine maintenance that sometimes can help avoid costly major repair jobs. FHWA specialists may also provide packets of materials summarizing relevant Federal regulations.

FHWA safety specialists frequently must devote a considerable amount of time to the tedious review of numerous driver logs, vehicle maintenance records, accident reports, and driver qualification files. The review and photocopying (if necessary for enforcement purposes) of these documents is a slow and careful process. Additional information on the enforcement process is provided in the next chapter.

Although most carriers are somewhat cooperative, some carriers are rather unwilling to assist FHWA employees. FHWA employees generally go to great lengths not to interfere with the operations of the motor carriers that they are visiting.

FHWA safety specialists conduct relatively few investigations of motor carrier accidents. In recent years, FHWA personnel have participated in less than 50 such investigations annually. FHWA focuses its work on accidents of major consequence or where its assistance is specifically requested by the National Transportation Safety Board (NTSB). Several reasons explain why FHWA conducts only a small number of accident investigations:

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[30] The terms "FHWA safety specialists" and "FHWA safety investigators" are used interchangeably.

—NTSB has an investigations program for truck and bus accidents and it conducts special indepth studies on truck accidents;
—State enforcement officials conduct many accident investigations (this activity is supported with MCSAP funds);
—the workload of FHWA does not allow for the conduct of many investigations; and
—FHWA receives thousands of accident reports every year from motor carriers.

Program Costs and Workload Utilization

Although program elements and emphasis areas have varied at different times, the following indicates the estimated costs of the Federal education and enforcement program:

FY 1989	$15.2 million
FY 1988	$14.2 million
FY 1987	$11.9 million
FY 1986	$ 9.3 million
FY 1985	$ 8.4 million.[31]

FHWA keeps careful count of how its motor carrier safety personnel working in its regions allocate their time. As shown in table 6, 51 percent of FHWA's (nonmanagement) regional motor carrier safety staff time during FY 1988 was spent on educational and technical assistance activities. In this category, the primary activity was by far the conduct of safety reviews of motor carriers. During FY 1988, approximately one-third of FHWA's regional (nonmanagement) motor carrier effort was spent on its enforcement program, including the conduct of compliance reviews. These data show that most of FHWA's recent compliance review efforts were directed at medium- and small-sized carriers.[32] Only a relatively small percentage of FHWA's time was spent conducting compliance reviews and bringing enforcement actions against motor carriers that have allegedly violated the Federal hazardous materials transportation safety regulations.[33] The remaining time of FHWA's staff was spent primarily on such activities as monitoring MCSAP and enforcing the commercial driver licensing regulations.

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[31] FHWA data.

[32] Medium-sized carriers are those with less than 100 power units but more than 20, small-sized carriers have less than 21 power units.

[33] It is difficult to audit a carrier's compliance with some of the hazardous materials transportation regulations at the principal place of business of the motor carrier. Compliance checks of many of the hazardous materials transportation regulations are best conducted on the road.

TABLE 6.—WORKLOAD STATUS AND STAFF UTILIZATION—REPORT PERIOD: FISCAL YEAR 1988 AND FOURTH QUARTER

Work item description	Item number	Work units				Staff hours utilized						
		Annual work plan	Number done this quarter	Number done this year	Percent AWP complete to date	Hours utilized this quarter on line item			Hours utilized year to date for this line item			Percent of total hours to date
						Duty	Travel	To date	Duty	Travel	Total	
Education and technical assistance:												
SR–091 carrier	101	28736	5250	22111	77	23586.0	10480.5	40	97229.0	43820.0	141049.0	41
SR–091 H/M carrier	102	3509	639	2755	79							
Safety or H/M meetings	103		122	650		823.5	347.0	1	4571.9	1875.5	6447.4	2
Program assistance	104					791.5	68.0	1	4107.5	273.0	4380.5	1
Special projects	105					2926.0	537.5	4	11903.5	2968.5	14872.0	4
Training presented	106					921.5	260.5	1	2860.5	719.0	3579.5	1
Driver waiver exam	107		21	107		292.0	114.5		1154.0	697.5	1851.5	1
Divided records authority	108					111.0			396.0	4.0	400.0	
Public inquiries	109		33345	103183								
Carriers added	110		7062	21689								
Carriers deleted	111		10759	40990								
Subtotal hours						29451.5	11808.0	48	122222.4	50357.5	172579.9	51
Selective Compliance Enforcement:												
Enforcement report—MCSR	201	920	177	775	84	6985	445.5	9	32714.5	2176.5	34891.0	10
Enforcement report—H/M	202	92	6	24	26	168.5	4.0		1080.5	50.0	1130.5	
Enforcement report—MCSR–09H/M	203	104	16	45	43	775.0	25.0	1	2437.5	154.5	2592.0	1
Enforcement report—Driver/other	204	181	13	75	41	219.0	15.0		1668.0	132.0	1800.0	1
Enforcement report—Assist	205		41	203		492.0	137.0	1	2271.0	668.0	2939.0	1
CR–091 Large	206	230	74	351	153	2080.0	529.5	3	9906.0	2480.5	12386.5	4
CR–091 Medium	207	792	278	841	106	3616.5	1050.5	5	13997.5	4253.5	18251.0	5
CR–091 Small	208	2124	834	2112	99	6761.0	2494.5	11	19239.0	7001.5	26240.5	8
CR–091 H/M carrier	209	838	304	961	115	916.0	237.0	1	3428.5	845.0	4273.5	1
CR–091 H/M shipper	210	623	166	524	84	491.0	109.5	1	1678.0	398.0	2076.0	1
CR–091 Cargo tank manufacturer	211	8		3	38				79.0	30.0	109.0	
CR–091 (intra) financial resp. review	212		26	87		80.0	26.0		224.0	97.5	321.5	
Complaint investigations—Driver	213	235	101	430	183							
Complaint investigations—Other	214	121	103	443	366							
Complaint investigations—State	215	7	6	40	571							

Driver/vehicle examinations	216		43	189							
Out-of-service vehicles	217		1	58							
Out-of-service drivers	218		28	54							
Out-of-service buses	219			49							
Out-of-service bus drivers	220			2							
Driver/vehicle exam—bus	221			3							
Other drivers disqualified	222		24	190	126.0	13.0		406.0	35.5	441.5	
Monitoring and evaluating SCE	223				2681.0	103.0	3	10059.5	390.5	10450.0	3
Subtotal hours					25391.5	5189.5	36	99189.0	18713.0	117902.0	35
Commercial accident prevention evaluation:											
Number of carriers identified	301		59	60	158.0	14.0		234.0	15.0	249.0	
C.A.P.E. contacts	302		26	34	102.0	19.0		141.0	31.0	172.0	
Accident investigations	303		18	41	252.0	48.0		769.5	123.5	893.0	
H/M accident investigations	304		8	18	128.0	37.0		394.5	92.5	487.0	
Monitoring and evaluating cape	305				147.0			514.0		514.0	
Subtotal hours					787.0	118.0	1	2053.0	262.0	2315.0	1
MCSAP:											
State & local technical assistance	401				4462.5	418.5	6	15477.0	1785.0	17262.0	5
State & local training presented	402				625.0	152.0	1	4324.0	900.5	5224.5	2
State & local monitoring/evaluation	403				5373.0	542.0	7	19344.0	2184.0	21528.0	6
State SR–091	404	4537	921	2575	57						
State CR–091	405		18	63							
Quarterly reports submitted	406		24	113							
Subtotal hours					10460.5	1112.5	14	39145.0	4869.5	44014.5	13
Commercial driver license:											
Number licenses returned to States	501		902	10899	21.0			201.0	10.0	211.0	
Number entered on complaint register	502		18	6495							
Number of enforcement actions	503		25	45	120.0	8.0		376.5	41.0	417.5	
Unqualified driver letters issued	504		155	726	599.5	32.0	1	1819.0	140.0	1959.0	1
Disqualification of driver letters	505		199	2891	453.0	15.0	1	1900.5	188.0	2088.5	1
Subtotal hours					1193.5	55.0	1	4297.0	379.0	4676.0	1

Total staff hours utilized as reported for this quarter—85567. Year to date totals—341483.Q03
Note.—Annual work plan figures are version 03, effective: May 24, 1988. "Percent" is percentage of item total (AWP/quarterly hours/cumulative hours).Q03
Source: FHWA.

How has FHWA Allocated its Regional Motor Carrier Safety Resources?

During the last ten years, FHWA has focused on different national safety issues. At one time FHWA safety specialists were concentrating on those companies that were transporting hazardous materials. At another time, these investigators were directed to target compliance with noise regulations as a primary area of concern. At still another time, buses were emphasized. The emphasis areas have at times changed, sometimes tracking those issues receiving a lot of attention in Congress.

In addition to emphasis areas, FHWA also has allocated its resources according to the criteria of size and type of carrier and other safety related factors. Until the fall of 1986, FHWA devoted more of its auditing activities to medium- and large-sized carriers with less attention focused on the small-sized carriers relative to their proportion of the motor carrier industry. For many years, FHWA apparently reasoned that since the large carriers had the most drivers and transported the longest distances, they had, in general, the largest exposure or potential for accidents. Prior to the fall of 1986, FHWA spent more time on ICC-authorized carriers than private carriers.

As a result of the introduction of the safety review program in the fall of 1986, FHWA has been spending most of its time reviewing the safety compliance systems of small- and medium-size carriers. Since then FHWA has been directing less attention to the large carriers of 100 vehicles or more than it had in previous years.

Also during the last ten years, FHWA has tried several different approaches to determining which carriers should be subjected first to an audit, or as it is now called a compliance review. The Education and Technical Assistance Program (ETA), which is discussed later in detail, is the current approach FHWA is using to identify high risk or unsatisfactory rated motor carriers.

FHWA'S EDUCATION AND ENFORCEMENT PHILOSOPHY AND PROCEDURES

This chapter considers FHWA's education and enforcement philosophies and programs. FHWA enforcement procedures, the setting of penalty assessments, FHWA's internal recommended penalty guidelines, and the effects of penalties on promoting compliance with the Federal safety regulations are discussed. The types of violations frequently alleged in FHWA's enforcement cases are listed. Finally, the historical record and number of FHWA's enforcement accomplishments is reviewed.

Education is Stressed but a High Degree of Noncompliance Remains

Since its start, FHWA's motor carrier safety program has included both education- and enforcement-oriented activities. Education, however, has always been the stressed activity. FHWA took this posture because the sheer number of motor carriers required that voluntary compliance be emphasized. Education is needed to strengthen the degree and frequency of voluntary compliance. FHWA basically hopes that most motor carriers, once informed of their safety responsibilities under Federal statue, will try to comply with the safety regulations. As FHWA's motor carrier safety program is currently structured, the emphasis is definitely oriented towards educational activities. An issue that Congress might want to address is: What should be the appropriate balance between these two essential activities—education and enforcement?

In order to strengthen its reliance upon voluntary compliance, FHWA has fundamentally restructured the education component of its motor carrier safety program. As part of its safety review effort, FHWA safety specialists are contacting many commercial carriers, primarily small-sized carriers, who have had no previous contact with the FHWA. [But as discussed later in this report, these may be the carriers with low accident rates.] After the initial safety review, FHWA would like to revisit all of the motor carriers that receive either a conditional or an unsatisfactory safety rating. (This rating process is described later in this report.)]

GAO noted in its 1977 report on FHWA's motor carrier safety program that "the many safety violations in relation to the limited number of the carriers and drivers inspected each year lead us to believe that the Bureau's (FHWA's) policy of encouraging voluntary compliance has not been effective." [34] As discussed below and documented throughout this CRS report, this conclusion, which is now 12 years old, still largely appears to be true.

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[34] Comptroller General of the United States. The Federal Motor Carrier Safety Program: Not Yet Achieving What the Congress Wanted. CED-77-62. May 16, 1977. p. 26.

Despite years of educational efforts supplemented with Federal and State enforcement sanctions, there still remains a large frequency of noncompliance in the motor carrier industry. There is overwhelming evidence that many companies and drivers are not in compliance with the Federal motor carrier safety regulations; however, there are many different degrees of noncompliance. State safety officers find a high frequency of noncompliance during MCSAP-sponsored roadside checks. Roughly 38 percent of the vehicles inspected and some 6 percent of the drivers inspected must be taken out-of-service because they are deemed by State and local officials to have critical safety defects or to be in noncompliance with critical safety regulations. The average nationwide percentage of trucks that is found to have critical safety defects during MCSAP roadside inspections has held within a narrow range for many years. Likewise, FHWA assigns roughly 8 percent of the carriers that are rated an unsatisfactory rating, and some 44 percent receive a conditional safety rating. These less than satisfactory ratings indicate that FHWA believes that one or more of the major safety management controls necessary to achieve compliance is not effectively functioning. In addition, numerous motor carriers are found not to be in compliance with the Federal motor carrier safety regulations during compliance reviews. Thus, even FHWA's own data indicates that voluntary compliance is not working effectively in many cases. On the other hand, voluntary compliance does have a role to play and its importance should not be ignored.

Furthermore, as indicated in tables 1 and 2, the number of deaths and injuries resulting from commercial motor carrier accidents continues to be staggering. Furthermore, many motorists continue to be frightened of trucks on our Nation's highways. Does the American public want FHWA to continue to rely so heavily upon voluntary compliance?

In terms of FHWA's authorities, the primary alternative to voluntary compliance is enforcement. A problem with enforcement is that it requires "the heavy hand" of government to be effective. Even though enforcement has its drawbacks, other measures, such as press releases detailing sanctions and safety fitness ratings (which are discussed later in this report), do not exert enough pressure to ensure an acceptable level of compliance for the motor carrier industry.

Enforcement Philosophy [35]

FHWA's enforcement philosophy is stated below.

> Further, motor carriers that do not meet the safety fitness standard shall be placed in remedial programs designed to identify safety problems and assist motor carriers in meeting the safety fitness standard. When the compliance by a motor carrier rated less than satisfactory fails to improve, the FHWA will take appropriate action to eliminate the safety hazard including, but not limited to,

[35] Although the Motor Carrier Safety Act of 1984 prescribes a wide range of possible enforcement activities, the focus of this report is on the one most frequently used by FHWA, namely a civil penalty forfeiture action.

initiating civil and criminal enforcement actions with progressively higher monetary fines, where appropriate.[36]

FHWA considers enforcement, i.e., a penalty action, to be one of several methods to improve the level of compliance exhibited by motor carriers and their drivers. FHWA uses enforcement sanctions, e.g., civil penalty forfeiture, when other administrative tools are considered, or have been proven to be, ineffective in improving compliance to a satisfactory level or when violations are life endangering.[37] For those carriers that do not respond to its administrative encouragement or warnings, FHWA uses the enforcement process as a last resort to achieve satisfactory compliance. An enforcement action is typically pursued when FHWA safety specialists determine that an enforcement sanction is needed to correct the safety management behavior of a motor carrier, driver, or shipper of hazardous materials. FHWA places those carriers that chose not to comply with the safety regulations and are assigned a conditional or an unsatisfactory rating in its Selective Compliance and Enforcement Program (SCE). As discussed later in this report, this program is designed to ensure periodic follow-up audits until these carriers achieve a satisfactory safety rating and are removed from the program.

FHWA policy dictates that its safety investigators must consider several factors when deciding whether to recommend an enforcement action. FHWA's enforcement manual states that four critical factors are to be considered in evaluating the violations documented: 1) the nature of the violations; 2) the circumstances of the violations as they relate to accidents or hazardous materials transportation incidents; 3) the frequency of the violation as it reflects on the safety management controls of the motor carrier or hazardous materials shipper; and 4) whether the gravity of the violation presents a clear and present danger.[38]

Even with these guidelines, there will always be much subjectivity in the decision to proceed with an enforcement case. Time, money, availability of information and evidence, workload, type and nature of past FHWA contacts, extent of noncompliance, and type and nature of violation are all factors that may enter into an investigator's and a supervisor's or program manager's judgement regarding the type and nature of an enforcement or administrative action that he/she decides to recommend or pursue. In deciding what type of enforcement action to take, if any, FHWA's safety investigator may also be interested in the "excuses" that the motor carrier has to offer, the extent and nature of corrective actions that the motor carrier has taken since FHWA's last visit, and the likelihood that an enforcement action would serve its intended purpose. For example, an investigator may decide not to recommend a specific enforcement action because the motor carrier has taken many positive steps to improve its compliance practices.

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[36] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures. p. 50964.
[37] U.S. Dept. of Transportation. Motor Carrier Safety Training Text, v. 4, chap. 1, Oct. 1, 1988. p. 1.
[38] Ibid., p. 6.

Enforcement Procedures

As a result of more than forty years of enforcement activities, the FHWA and its predecessors have developed a series of definitive and deliberative procedures that are generally followed during an enforcement action. Some of these are summarized below.

As part of a compliance review which is almost always the precursor to an enforcement action, an FHWA investigator looks for violations of the Federal safety regulations. The FHWA safety specialist initiates an enforcement action by developing a carefully documented case complete with detailed evidence of the alleged violations and the circumstances surrounding these violations. Evidence used in an enforcement case may include: trip sheets, dispatch and/or payroll records, bills of lading or shipping papers, copies of log books, expense receipts, and oral or written witness statements. Evidence may be collected regarding the severity and frequency of the alleged violations, culpability of the alleged violator, history of the company's safety record, and any mitigating considerations. With respect to the Federal motor carrier safety regulations, the FHWA investigator must collect evidence to substantiate that the alleged violations did occur, that the alleged violations occurred on a public highway, that the carrier, shipper, or driver is subject to FHWA's jurisdiction, and that the transportation involved a motor carrier in furtherance of a commercial enterprise.[39] In the case of a motor carrier, information is also collected on the size and nature of its business, such as its gross revenues, number of accidents and miles traveled by the fleet of that carrier.

In the building of an enforcement case, the FHWA investigator typically documents that the alleged violations were not trivial, that the alleged violator had some previous knowledge of the general safety requirements governing its operation, and that the alleged violations were not an isolated event, (unless the alleged violations are particularly acute, which is defined below).[40]

FHWA safety specialists are especially interested in pursuing enforcement actions to address acute or critical and chronic safety problems.[41] An acute or critical safety problem occurs when the type of noncompliance is rather severe, i.e., the potential for an accident or injury is substantially increased as a result of the alleged violation or the situation demands that the FHWA take a significant action. Examples of acute violations are placing of foodstuffs next to poisons in the back of a truck, taking placards off a truck in order to proceed through a tunnel restricted to hazardous materials traffic, or using an unqualified or disqualified driver, requiring or permitting a driver to drive while under the influence of a prohibited drug or alcohol. An acute violation might involve substantial property damage or accidents involving loss of life or injury. FHWA might even take an enforcement action against a motor carrier for an acute violation that was documented as a

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[39] Based on a review of numerous FHWA documents as well as discussions with several FHWA staff, 1988.

[40] Ibid.

[41] The terms "acute or critical" are terms of art rather than legally defined types of violations.

result of FHWA's first contact with that motor carrier. But as discussed in another chapter, this is extremely rare.

A chronic safety problem is one that continues to occur despite administrative efforts designed to change the compliance practices of the motor carrier, i.e., a motor carrier habitually refuses to come into compliance.

FHWA investigators do not always decide to recommend enforcement actions even when they find serious violations of the Federal safety regulations. A FHWA safety investigator might examine the files of a motor carrier and find many examples of violations related to the hours-of-service requirements, such as falsification of the logs, by a particular driver and only one or two instances of "bad" logs for other drivers of that motor carrier. Depending on a variety of factors, FHWA may decide not to bring an enforcement action.

For example, during a recent audit lasting several days of a motor carrier, a senior FHWA safety specialist allegedly discovered 29 instances of falsification of driver's logs; 26 instances of excess hours-of-service violations; 60 instances of logs not on file; and 540 instances of failure to show required information in a manner or form prescribed, which are considered possible recordkeeping violations. This motor carrier had previously received a conditional safety rating from the FHWA. This investigation was prompted because of a written complaint to the FHWA.

The investigator concluded that because some of the allegations could be documented, he could have recommended that an enforcement action be initiated; however, he decided to give the motor carrier a third chance. (FHWA had previously sent the motor carrier a letter stating that it was subject to its regulations, and FHWA had visited the motor carrier during a safety review.) In addition, the FHWA file on this carrier contained several roadside inspection forms issued several different States indicating that vehicles operated by this carrier had been declared out-of-service for alleged serious safety violations).

When closing out this audit, the FHWA investigator asked for a written response delineating actions that the motion carrier would take to ensure future compliance and warned the motor carrier that on his next visit, he intended to recommend an enforcement action if similar violations were found. The investigator stated that the decision on whether to recommend an enforcement case or not could have gone either way.[42] Another investigator handling this same audit might here proceeded with an enforcement action against this carrier.

This case example illustrates that the enforcement procedure is rather judgmental in nature. It also provides part of the rationale behind the option discussed in the last chapter of this report that would require FHWA to initiate an enforcement action or issue with a civil penalty whenever serious safety violations can be documented. The citation would not be subject to the existing civil penalty provisions and procedures set forth in the Motor Carrier Safety Act of 1984. This is an authority that FHWA currently does not have.

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[42] Personal communication with FHWA staff, 1988.

Many FHWA investigations or audits take three or four days. Many investigations are closed out without any action other than an administrative warning or suggestion. FHWA may decide not to bring an enforcement case for several reasons: a decision to give the motor carrier another chance, insufficient evidence to bring a formal enforcement action, insufficient number of counts or violations to warrant a formal proceeding, or a decision that further enforcement action is unnecessary because satisfactory compliance was achieved.

Frequently, the process of obtaining information that may lead to an enforcement action is time consuming and rather difficult. Many carriers may be less than willing or interested in cooperating during a FHWA safety or compliance review. FHWA safety specialists sometimes have to inform a motor carrier that they can request a subpoena to obtain needed documents and records. Perseverance is an essential characteristic that all successful FHWA safety specialists need.

Sometimes the investigative/enforcement process becomes rather adverserial in nature. In many cases, motor carriers try to delay or stall an investigation by a FHWA officer. These stalling tactics add to the rather inefficient and time consuming nature of many FHWA compliance reviews.

Enforcement Process Sequence

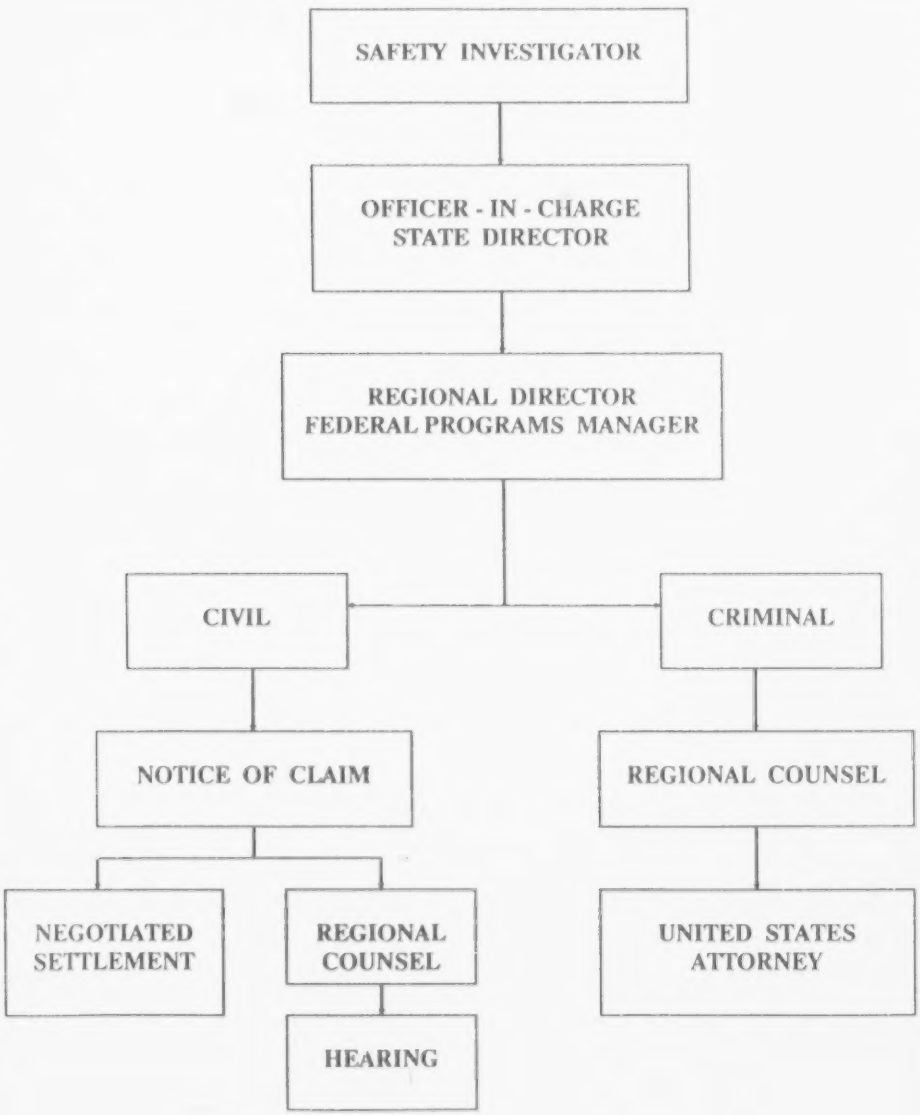
FHWA has instituted a definitive process that it uses in processing enforcement cases. Figure 2 shows the sequence of actions typically followed during an enforcement case. The typical sequence of events is simplified as follows:

1. FHWA safety investigator submits case to OIC or SD for review;
2. OIC or SD submits case to region where Federal Program Manager reviews case;
3. Claim Letter is sent to company or driver with alleged violations cited;
4. Case is negotiated and settled at the regional level;
5. Or, company or driver does not agree to settle case, FHWA issues a final order and case is turned over to the Department of Justice for collection of the civil claim; and
6. Or, at the discretion of the company or driver the case can be brought before a DOT Administrative Law Judge, but this procedure is only rarely used. (See end of figure.)

There is a great deal of review of any enforcement case as it moves up the ladder in FHWA toward final settlement. Once an investigator has completed an enforcement report, it is submitted to his/her immediate supervisor, the Officer in Charge (OIC) or the State Director of a particular State. The OIC or State Director is supposed to review an investigative or enforcement report with its accompanying evidence to make certain that it is complete, that the evidence supports the alleged violations, and that the report meets FHWA quality standards. The review is intended to ensure that an enforcement action is warranted.

FIGURE 2. Enforcement Case Review Process

MOTOR CARRIER SAFETY ENFORCEMENT CASE REVIEW PROCESS



Additional reviews are performed at Regional Headquarters by FHWA motor carrier safety personnel. The review at the regional level is sometimes less intensive than that performed at the State level. However, at the regional level, the Federal Program Manager can review the documentation supporting the case and whether the case meets FHWA quality standards.

The recommended amount of the initial penalty assessment is also reviewed at different levels. In most FHWA regions, the FHWA safety specialist that conducts the compliance review that provides the necessary documentation for an enforcement case usually does not get involved in recommending the amount of the penalty to be assessed. The objectivity of the investigator may have been compromised because of the difficulties faced during the compliance review. In these regions, the initial recommendation is made by the OIC or the SD. This amount can be concurred with or altered by the Federal Program Manager.

Once the FHWA has determined that an enforcement action will be taken against a motor carrier and that the case meets all of FHWA's requirements, a "notice of claim" letter is sent to a motor carrier.[43] The claim letter cites the alleged violations and the amount of penalty or fine that FHWA is seeking in its civil penalty action. In the claim letter the motor carrier is given three choices: pay the entire amount of the assessed penalty; ask for a meeting with a FHWA staff to discuss or compromise a settlement of the Government's claim, or contest the claim and reserve the right to a formal, trial-type, administrative hearing before a DOT administrative law judge.

FHWA's policy is that within 120 to 180 days from the date of the settlement agreement that a follow-up compliance review will be conducted on all carriers and shippers that were the subject of an enforcement action, unless it is determined that such follow-up action is unnecessary.

Reduced Complexity of the Enforcement Process

FHWA has undertaken several steps that are designed to reduce the complexity of the enforcement process. For example, FHWA has reduced the amount of paperwork that its investigators are required to submit in the preparation of a case submitted for enforcement action. FHWA estimates that this streamlining will reduce the average time spent in preparing a case from some 50–60 hours to some 30 hours. The timely processing of cases could reduce industry's resistance to settling a case in a timely manner with FHWA. The net effect of all of these steps should be to reduce the time period required to handle FHWA's enforcement cases. All of these changes should increase FHWA's capability to prosecute more enforcement cases in a timely manner.

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[43] Identical process is followed when case is brought against a driver or a shipper of hazardous materials.

Types of Violations Frequently Noted

Although violations vary greatly and each enforcement action is different, the typical types of violations that are often noted in FHWA enforcement cases include one or more of the following:

—failure to possess necessary financial responsibility endorsements or to carry adequate amounts of liability insurance;
—failure to maintain necessary driver qualification file on each driver employed;
—requiring or permitting driver to drive more than 10 hours without the required 8 hours off duty;
—failure to maintain medical certificates in driver qualifications files;
—failure to follow one or more provisions of the hazardous materials transportation regulations;
—failure to maintain proper vehicle repair records;
—failure to fix defects noted during driver inspections of vehicles;
—failure to use a driver that has been physically reexamined every 24 months;
—failure to use qualified drivers; and
—driving after being on duty 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

Statictics on and Analysis of Enforcement Cases and Closed Enforcement Actions

Table 7 indicates the number and type of principal enforcement activities undertaken by the FHWA since 1983. These data and our analysis of FHWA's enforcement activities indicate:

1. Despite major improvements in the enforcement authorities available to FHWA as a result of enactment of the Motor Carrier Safety Act of 1984, and more than a doubling of its regional staff since FY 1985, the number of civil penalty enforcement cases recommended for prosecution—line A.1, table 1—against alleged violators of the Federal motor carrier safety regulations did not increase substantially until FY 1988.[44] FHWA has subsequently dropped about 200 of the cases recommended for prosecution in FY 1988.

2. Despite increasing concern over the transportation of hazardous materials, the number of enforcement cases recommended for prosecution by FHWA against those who were charged with violating the Federal hazardous materials transportation regulations has declined since FY 1986 (lines A2 and A3).

3. FHWA is conducting numerous reviews of carrier operations where serious violations are allegedly found, but civil penalty enforcement actions are not being taken.

4. In terms of the amount of penalties collected, the productivity of the typical FHWA safety specialist is quite low.

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[44] The more than doubling of the regional staff required a major shift in field staff activities during this period. The experienced senior staff had to devote time to the training and supervision of these new employees that were hired at the Grade 5 and 7 level. Less time was therefore available for investigations and enforcement activities.

During FY 1988, a typical investigator's work resulted in the collection of $10,250 in civil penalties each year. This is roughly equivalent to the prosecution of about 2.3 average-sized cases in a year. (This calculation assumes a work force of 195.) During FY 1987, a typical investigator's work resulted in the collection of $12,179 in civil penalties each year, assuming a workforce of 165.

5. For FY 1985–1987 the amount of fines collected has leveled off in the $2 million per year area (line E). FY 1988 represents the first year in which newly trained safety investigators really began to make a substantial contribution to the enforcement process. Because of increased congressional and FHWA interest in the size of penalties, and because of an increased number of trained investigators, it is likely that the amount of penalties collected for FY 1989 will increase beyond the FY 1988 amount.

TABLE 7.—SELECTED PRINCIPAL ENFORCEMENT ACTIVITIES UNDERTAKEN BY FHWA

	Fiscal year—					
	1983	1984	1985	1986	1987	1988
A. Number of enforcement cases recommended for prosecution involving alleged violations of:						
1. Motor carrier safety regulations (evidence collected)	317	402	627	653	654	850
2. Hazardous material transportation regulations (evidence collected)	73	65	54	51	28	24
3. Motor carrier safety and hazardous materials transportation regulations (evidence collected)	71	70	58	86	62	45
B. Other cases investigated but no evidence collected, no prosecution pursued	861	831	1,142	1,800	106	[1] 0
C. Total number of enforcement cases recommended for prosecution	461	537	739	790	744	[2] 919
D. Number of enforcement cases prosecuted and closed	461	474	739	529	498	456
E. Amount of fines collected	$447,731	$795,805	$788,916	$1,877,300	$2,009,597	$1,998,647

[1] During 1987, internal change in FHWA policy eliminated this category of enforcement action.
[2] About 200 of these cases were later dropped.
Source: FHWA.

Setting of Penalties

Section 521 (b) of title 49, U.S.C., as amended by section 213 (b) of the Motor Carrier Safety Act of 1984 provides four categories of penalties for violations of the Federal motor carrier safety regulations (FMCSR). These categories are: 1) recordkeeping violations, 2) serious pattern of safety violations, 3) substantial health or safety violations, and 4) employee nonrecordkeeping violations. Relevant sections of this Act is presented below.

(2) Execpt as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of a recordkeeping requirement issued by the Secretary pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984 shall be

liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single violation shall not exceed $2,500. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense. Notwithstanding any other provision of this section, except for recordkeeping violations, no civil penalty shall be assessed under this section against an employee for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

This Act also provides that the amount of the civil penalty shall be determined by taking into account the following nine factors: nature, gravity, circumstances and extent of the violation; history of prior offenses; degree of culpability; ability to pay; effect on ability to continue to do business; and such other factors that justice and public safety may require. As a result of considering these factors as well as other factors discussed below, it is often difficult for FHWA to impose substantial and meaningful penalties against those charged with violating the safety regulations.[45]

There also is a psychological aspect that enters into the settlement process. FHWA negotiators may consider the carrier's intent: Is the carrier trying to comply with the regulations? Does the carrier really intend to improve his safety operations after the enforcement case is settled? What is the attitude of the motor carrier towards safety compliance and towards the enforcement process? The effect of these psychological factors on the final penalty assessment cannot be quantified, but in many cases, it is probably substantial and may affect the mitigation of the fine.[46]

FHWA maintains that the purpose of a civil penalty imposed on a motor carrier is not to cripple its operations or financial stability. By getting the attention of management, the penalty is supposed to promote future compliance.

FHWA has issued specific guidelines that affect the determination of civil forfeiture penalty amounts for violations of the Federal motor carrier safety regulations under its jurisdiction. A copy of the recommended penalty amounts is shown in table 8. FHWA is currently working on initiatives that may revise and increase these amounts.

FHWA's current penalty assessment guidelines have the effect of substantially reducing the amount of penalties imposed on motor carriers. For example, FHWA guidelines recommend that the Federal Program Manager handling an enforcement case should in-

[45] Partly based on a review of hundreds of recent FHWA enforcement cases and personal communications with FHWA staff, 1988.
[46] Ibid.

TABLE 8. *FHWA recommended guidelines for civil penalty amounts per violation (assessment range/dollar conversion table)*

Range	*Assessment (per violation)*
(a) Recordkeeping violations—carriers:	
Low range	$300
Medium range	$350–450
High range	$500
(b) Recordkeeping violations—employees:	
Low range	$150–200
Medium range	$250–350
High range	$400–500
(c) Serious pattern of safety violations:	
Low range	$300–400
Medium range	$450–600
High range	$700–1,000
(d) Substantial health or safety violations:	
Low range	$500–1,500
Medium range	$2,000–4,500
High range	$5,000–10,000
(e) Employee nonrecordkeeping violations:	
Low range	$200–300
Medium range	$350–600
High range	$650–1,000

Source: FHWA.

clude in the claim letter as few separate counts as are reasonably necessary to impose an appropriate penalty. The guidelines read: "It is not necessary to charge an alleged violator with every offense for which the respondent may be technically liable. . . . The attorney should assure that the respondent is charged with the most serious offenses consistent with the respondent's conduct." [47]

FHWA's guidelines also make the prior history of contact that a motor carrier has had with FHWA a major determinant in the setting of penalties. In some regions, FHWA officials would impose a low penalty amount when serious violations or a pattern of violations are found during FHWA's first follow-up compliance review after a safety review. A medium range penalty amount might be assessed during a second enforcement action taken against a motor carrier. A high penalty amount might be assessed as a result of multiple visits that have been directed at improving the safety management behavior of that motor carrier. Other FHWA regions only use the medium or high penalty amounts, and rarely use the low penalty recommendations and then only against small companies.

Although uniformity in the settling of cases is FHWA's objective, the three regions contacted during this research all determined final penalty assessments in different ways.

As allowed by current law, FHWA personnel often negotiate the amount of a final penalty assessment with the charged motor carrier. FHWA's willingness to reduce a penalty amount is influenced by evidence that the motor carrier presents during a settlement conference. FHWA provides the motor carrier with an opportunity to offer reasons or excuses for the alleged violations. Prior to a final settlement, the motor carrier can offer a list of changes that

[47] FHWA. Civil Forfeiture Assessment Guidelines for Violations of the Motor Carrier Safety Regulations, Nov. 26, 1985. p. 1.

it is pursuing to improve its compliance with the safety regulations. FHWA personnel may tend to give more credence to written evidence of the motor carrier's actions than to merely an oral statement. In many cases, motor carriers are successful in substantially reducing the amount of the initial proposed penalties.[48]

The management of a motor carrier appearing in person at the settlement table may do better than the motor carrier who just sends an attorney. FHWA considers the actual presence of the motor carrier an indication of its willingness to become directly involved in addressing its safety problems.

The Federal Program Manager handling a case may call upon an FHWA attorney for assistance. This assistance is generally sought when:

—a motor carrier brings an attorney to the settlement conference; or

—a motor carrier or its attorney challenges legal aspect of the case, such as FHWA's jurisdiction or the validity of supporting documentation.

Another key factor that could affect the final amount of a civil penalty assessment is the judgment of the FHWA attorney. When FHWA cannot reach a final settlement and obtain payment on a civil case, the case must be referred to the Department of Justice for collection. To avoid this referral, FHWA attorneys try to settle such cases in a reasonable and expeditious manner. FHWA attorneys must ask: What does it take to settle the case so that we can avoid having to refer it to the Department of Justice?

To create a more vigorous enforcement process that would result in larger, more meaningful penalty assessments, and thus increased compliance, Congress might consider amending the civil penalty provisions of the Motor Carrier Safety Act of 1984.[49] Various approaches to this option are considered in the last chapter of this report.

The Effects of Penalty Assessments on Promoting Compliance With the Federal Motor Carrier Safety Regulations

The amount of a civil penalty assessment can have a major effect on promoting the future compliance activities of a motor carrier (shipper or driver). For example, many carriers will not change their safety practices until FHWA takes one or more enforcement actions against them. FHWA has found that meaningful penalty assessments can promote compliance and convince motor carriers of FHWA's intentions. Too low a penalty sends the unwanted message to industry that noncompliance with the Federal motor carrier safety and hazardous materials transportation regulations is tolerated by FHWA. Furthermore, low or insignificant penalty actions tend to have an adverse impact on the morale of FHWA's safety investigators.

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[48] Based on a review of numerous recent FHWA enforcement cases.

[49] Congress has recently revised the civil penalty provisions of the enforcement program implemented by the Federal Railroad Administration (FRA). FRA is now authorized to assess civil penalties for specified violations "in an amount of not less than $250 nor more than $10,000, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 may be assessed."

For some carriers FHWA's penalties might be considered part of the expected costs of doing business. This is especially true of penalty cases taken against medium- and large-size carriers that are settled for amounts in the $2000 to $5000 range. Because of FHWA's workload, it is highly unlikely that more than two enforcement actions, and usually not more than one, will be brought against the same motor carrier in one calendar year. In many cases, it might be a lot less expensive for a motor carrier to keep paying fines in the amount of $2000 to $5000 once or at most twice a year, than to hire a safety director, who will probably be paid at least $25,000 per year, or to allocate the required time and money needed to comply with the safety regulations. This is especially true for medium and larger carriers. On the other hand, some motor carriers are well aware of the financial advantages of remaining in compliance, especially given the potential for penalties from both State agencies and FHWA as well as the financial costs of having drivers and vehicles placed out-of-service. Other carriers, however, do not take all of the required actions to improve their operations after having been fined. Sometimes, this occurs because they are operating on a shoestring and cannot afford to spend money needed to comply with all of the safety regulations.

FHWA's civil penalty system needs to be sufficiently meaningful to encourage industry to comply voluntarily with the Federal safety regulations. Promoting a high level of voluntary compliance is essential because FHWA does not have the resources to deal effectively with the high level of noncompliance that FHWA is finding in the operations of many carriers.

In addition to imposing penalties, FHWA's enforcement process can motivate motor carriers to comply with the Federal safety regulations in other ways. Frequently, FHWA issues a press release when it collects a civil penalty from a motor carrier. The public embarrassment resulting from this announcement can be rather painful to some carriers. In some situations, this embarrassment can be more meaningful than the amount of the assessment paid to FHWA. Sometimes, during the settlement process, a motor carrier will agree to pay the claim provided that a press release is not issued.

FHWA can also require any motor carrier served with a notice of violation to post a copy of such notice in such places as the FHWA determines appropriate to aid in enforcement. (49 U.S.C. 521(b)(3)). But, this authority is rarely used.

PROGRAMMATIC ASPECTS OF FHWA's MOTOR CARRIER SAFETY FIELD OPERATIONS

During the last three years, FHWA has instituted several new programs that are designed to improve the effectiveness and efficiency of its motor carrier safety field operations. These major new programs are the Education and Technical Assistance Program; the Selective Compliance and Enforcement Program; and the Commercial Accident Prevention and Evaluation Program. According to FHWA, these programs were developed to:

1. ensure that motor carriers are meeting the safety fitness standard;
2. provide an enforcement framework to systematically deal with problem carriers including "imminently hazardous" carrier operations that require immediate action by the motor carrier to eliminate serious hazards to the motoring public;
3. identify safety countermeasures relevant to specific causes of accidents; and finally,
4. measure the effectiveness of FHWA's activities and the safety regulations in reducing commercial motor vehicle accidents.[50]

Each of these programs is described in this chapter. Special focus is directed to the benefits and shortcomings of FHWA's safety review or rating process, which is the major component of its Education and Technical Assistance Program.

FHWA has spent considerable time and effort developing these new motor carrier safety programs. FHWA program managers have field tested these programs and the results from these tests have been used to improve these new initiatives.

As a result of these new programs which are supported by an improved management information system, FHWA is beginning to implement a substantially strengthened "National Motor Carrier Safety Program." As discussed in this and the last chapter, there are, however, several ways to improve upon the various new initiatives of FHWA.

Educational and Technical Assistance Program (ETA)

The ETA program is designed to provide motor carriers and shippers with technical and educational guidance to assure a more knowledgeable regulated industry. ETA seeks to gain industry's assistance in the application of Federal safety regulations. As part of ETA, FHWA safety specialists provide assistance to carriers and hazardous materials shippers to strengthen their safety and management controls, to achieve and maintain a satisfactory level of compliance with Federal safety regulations, and to reduce the oc-

[50] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures, p. 50964.

currence of preventable accidents and hazardous materials transportation incidents. A major component of the ETA effort is the safety rating program. ETA is both an information dissemination program as well as a safety awareness and support effort.

In addition to conducting safety ratings and answering questions during the safety review (SR), FHWA safety specialists provide other forms of educational and technical assistance. For example, FHWA employees might:

1. recommend that the motor carrier implement a disciplinary system to encourage drivers to fill out their driver logs properly and in a timely manner;
2. recommend that the motor carrier develop a management monitoring program to improve its compliance with the safety regulations;
3. recommend that the motor carrier hire a mobile safety supervisor to monitor the operations of its commercial vehicles, especially in those cases where the motor carrier is having many preventable accidents;
4. recommend driver training courses;
5. request that the motor carrier submit in writing a list of actions taken by the motor carrier to improve its compliance with various safety regulations;
6. supply information on specific regulations that the motor carrier is having difficulties complying with;
7. supply information to a mechanic employed by a motor carrier about specific steps that should be followed to get into compliance with various vehicle maintenance and repair regulations;
8. provide his/her telephone number and state that they are available to answer questions;
9. provide information targeted to carriers about specific changes in the Federal safety regulations;
10. provide in-depth seminars on Federal motor carrier safety regulations at various industry or association meetings; or
11. recommend awards programs to help motivate driver compliance and safe driving practices; or
12. provide regulatory interpretations both orally and in writing.

Safety Reviews (SR) and Safety Ratings

The SR process, the starting point for FHWA's safety program, is used to determine the safety rating or fitness of unrated motor carriers. During a SR, a FHWA safety specialist solicits answers to a series of questions that are designed to provide an overview of the safety operations of a motor carrier. A copy of part of the SR-1/CR-1 Part A form, including the questions that the FHWA requires its personnel to seek information on, can be obtained from DOT. The FHWA specialist seeks information that provides evidence as to whether a motor carrier has safety control procedures in place that will enable it to achieve compliance with the Federal motor carrier safety and the hazardous materials transportation regulations. More specifically, the safety specialist must determine

whether a motor carrier has adequate safety management controls in place to meet FHWA's safety fitness standard and whether these are functioning effectively. To meet the safety fitness standard, the motor carrier shall:

> demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with various safety requirements to reduce the risk associated with:
>
> a) commercial driver's license standards violations;
> b) inadequate levels of financial responsibility;
> c) the use of unqualified drivers;
> d) improper use and driving of motor vehicles;
> e) unsafe vehicles operating on the highways;
> f) nonreporting of accidents;
> g) the use of fatigued drivers;
> h) inadequate inspection, repair, and maintenance of vehicles;
> i) transportation of hazardous materials, driving and parking rule violations; [51] and
> j) motor vehicle accidents and hazardous materials incidents.[52]

During this review, a FHWA specialist typically examines such items as: compliance with hours-of-service, driver qualification, maintenance records, and financial responsibility regulations. Vehicles are rarely inspected during the course of a SR.

During a SR, the FHWA safety investigator is generally not looking for violations of specific safety regulations. In fact, there generally will be no prosecution initiated for safety violations found during the SR.[53] FHWA safety specialists, however, may initiate an enforcement action for violations of the regulations requiring minimum levels of financial responsibility. Limited sampling of the motor carriers' records is part of the SR process.

The shorter and more efficient safety rating procedure that FHWA is currently using allows this Agency to determine the safety fitness of many more carriers than was previously possible.

Educational Benefits of the SR

A major purpose and benefit of the SR is the opportunity for the FHWA to provide educational and technical assistance to a motor carrier. The safety review process is remedial in design; it is not generally intended to be punitive. Although exact figures are unavailable, it is estimated that roughly 40 percent of a typical two- to three-hour SR meeting with a motor carrier is spent asking questions and that about 60 percent of the time is spent providing technical assistance or educational materials. FHWA instructs its employees to give priority to those motor carriers who want technical assistance or information on how to comply with the Federal

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[51] Part 397 and parts 170–177 of 49 CFR.
[52] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures, p. 50968.
[53] If FHWA had had prior contact with the management of the firm, but under a different corporate name or entity, FHWA might consider that prior knowledge had been previously established and an enforcement case might result if serious violations were documented. Acute or extremely serious safety violations noted during this first visit may lead to an enforcement action.

motor carrier safety and hazardous materials transportation regulations.

At the end of a safety review, the FHWA safety investigator discusses with the motor carrier those parts of the regulations where the carrier needs to improve its compliance. The FHWA employee provides specific recommendations on measures needed to be taken to get into compliance with the regulations. To help explain some of these, FHWA has prepared specific information packets that FHWA investigators may provide to motor carriers.

Many carriers listen to FHWA's guidance and are motivated to take the necessary corrective actions needed to improve their compliance with the safety regulations. FHWA employees maintain that the SR process introduces a degree of humanity and compassion into the education/enforcement process. They argue that it is much better and fairer to educate and warn motor carriers during their first contact with FHWA than to start an enforcement action. One FHWA official pointed out that the SR process is widely appreciated by much of the motor carrier industry and that the SR process strengthens FHWA's positive image among industry groups.[54]

The SR, however, is not adequate to motivate many other carriers to improve their operations. These carriers are likely to take the necessary steps to improve their level of compliance only after FHWA starts an enforcement action against them as a result of a follow-up visit at a later time. This follow-up visit may not occur for years.

Other Benefits of the SR Program

The benefits of the SR process are numerous and are only briefly summarized below.

1. The SR process provides evidence that a motor carrier was previously contacted by the FHWA. In addition to providing a warning to a motor carrier, the SR provides documentation that the motor carrier had some prior knowledge of the regulations. As explained previously, in most cases FHWA considers the establishment of prior knowledge to be essential before enforcement is initiated.
2. The SR process helps the FHWA determine the size of the industry and specific motor carriers under its jurisdiction.
3. FHWA has used the safety review process to help educate approximately 165 junior investigators that it has recently hired. The SR is a carefully defined procedure that can be followed with several months of training. Furthermore, it serves as part of the training foundation for the compliance review process. There is an evolutionary process of learning to do a SR and then advancing into CR work. The SR introduces FHWA safety specialists to the broad spectrum of compliance problems they are likely to encounter during their future work for FHWA.
4. FHWA uses the SR process to visit many more carriers than could possibly be contacted through FHWA's existing en-

[54] Personal communication with FHWA official, 1988.

forcement process. The safety review effort is the largest outreach program that FHWA has ever attempted. As a result of this program, FHWA has increased its on-site reviews of motor carrier operations by 80 percent.[55] FHWA believes it is much more cost-effective to contact carriers using the SR process than through enforcement actions.

5. The SR provides the FHWA with essential information that could be used to help determine the overall effectiveness of FHWA's program. This information includes: numbers of drivers and vehicles used by the motor carrier; number of total, preventable, and reportable accidents the carrier had experienced during the last 12 months; and total miles travelled during the last 12 months. However, the FHWA has not evaluated these data to show whether an increase in motor carriers' level of compliance with FHWA safety regulations is associated with a reduction in accident rates or leads to a reduction in the total number of accidents.

Safety Ratings and FHWA's Priority System for Determining the Order of Future Visits

The information gathered during a safety review is used to determine the safety rating of a motor carrier. FHWA assigns either a satisfactory, conditional, or unsatisfactory safety rating to a motor carrier. As defined by FHWA,

Satisfactory safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in section 385.5 of 49 CFR. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

Conditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in section 385.5 (a) through (h) (see (a) through (h) in previous description of the safety fitness standard).

Unsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in section 385.5 (a) through (h).[56]

Thus far, FHWA investigators have found that roughly 52 percent of those motor carriers that have been rated do not have the necessary safety management controls in place to meet FHWA's safety fitness standard in order to obtain a satisfactory safety rating. FHWA places about 44 percent of the rated motor carriers in the conditional category and almost 8 percent in the unsatisfactory category.[57] (FHWA assigns a satisfactory rating to less than one-half of the motor carriers that it rates.)

Prior to the start of the current SR program, FHWA had assigned safety ratings to some 35,000 motor carriers. Since the start of the SR program in August of 1986, FHWA has rated approxi-

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[55] U.S. DOT. FHWA. Motor Carrier Activities of the Federal Highway Administration, Mar. 1988. p. 2.

[56] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures, p. 50969.

[57] As of Mar. 2, 1989.

mately 46,000 additional carriers, thus bringing the total number of rated, active carriers to 66,000. This number excludes deletions of carriers that have gone out of business or have merged with other companies. There are an estimated 120,000 motor carriers that have not been rated.

FHWA uses the information obtained during the SR as part of its method of determining which carriers need to be visited first for a follow-up audit, now called a compliance review (see section below). If the safety rating is satisfactory, FHWA places that motor carrier in its Educational and Technical Assistance Program. If the rating is conditional or unsatisfactory, the carrier is placed in FHWA's Selective Enforcement and Compliance Program (which is discussed below).

FHWA places those carriers that receive an unsatisfactory rating at the top of their list for a follow-up visit. This Agency does not have the manpower to continue its other programs at current levels and, once every year and a half, to audit, e.g., to conduct a compliance review on all those carriers rated unsatisfactory. It would probably take FHWA staff 10 years to revisit and audit all of the motor carriers that have received a conditional or unsatisfactory safety rating. (FHWA's workload situation is discussed in detail in the next chapter.)

Unless a complaint is lodged against a carrier rated satisfactory or unless FHWA finds some other pressing reason, such as MCSAP roadside-inspection reports, it is doubtful that FHWA would audit such a motor carrier for many years. Thus, the safety ratings are of key importance, because they usually determine which carriers will be subject first to future FHWA follow-up activities.

Many motor carriers are motivated to obtain a satisfactory safety rating from the FHWA. An unsatisfactory rating could adversely affect its insurance premium and its ability to obtain insurance coverage. Furthermore, some shippers will not use carriers that have an unsatisfactory or even a conditional rating. The safety ratings can have major bearing on the economic future of a motor carrier, especially when the Interstate Commerce Commission (ICC) refuses to grant it ICC operating authority for having an unsatisfactory safety rating, or when the Department of Defense will not tender shipments of hazardous materials to the carrier.

Confidentiality of the Mathematical Formula Used to Determine a Safety Rating

FHWA keeps the mathematical formula used to determine safety ratings confidential. FHWA does not want the motor carrier industry to know exactly how ratings are determined. FHWA appears to be concerned that some motor carriers might design their answers and the information supplied during a safety review in such a manner that might allow an unwarranted satisfactory safety rating to be obtained. In addition, FHWA does not want industry to focus its safety concerns only on those aspects judged to be most important for obtaining a satisfactory safety rating. FHWA maintains

that disclosure would interfere with the voluntary compliance that FHWA wants to promote in all areas of motor carrier safety.[58]

FHWA also refuses to provide the methodology used to determine their safety ratings to State governmental officials. Some State safety employees have not appreciated FHWA's unwillingness to share the exact details of its safety rating process.

It can be argued that by increasing the sampling size and by randomly verifying more of the answers that the motor carrier provides, the integrity of the safety rating process could be maintained even if all the processes and details of the safety rating process were disclosed.

Even though the exact process is kept confidential, it is known that several factors maybe used to determine a safety rating. These include:

—adequacy of safety management controls;
—frequency and severity of regulatory violations;
—frequency and severity of driver/vehicle roadside inspection regulatory violations;
—number of out-of-service driver/vehicle violations;
—increase or decrease in identical regulatory violations discovered in safety and compliance reviews;
—frequency of accidents, hazardous materials incidents, reportable accident rate per million miles, reportable preventable accident rate per million miles and whether these accident and incident indicators have improved or deteriorated over time; and
—violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety when compatible with Federal rules, regulations, standards, and orders.

The number of violations and vehicle accidents will be weighted to reflect the size of the carrier's operations before assigning a safety rating.[59]

Legislative Basis for Safety Fitness Determinations

In section 215 of the Motor Carrier Safety Act of 1984, Congress directed the Secretary of Transportation to establish a *procedure* to determine the safety fitness of interstate motor carriers. In response to this provision and at the urging of the Secretary's Task Force on Safety, DOT has determined that it is its "mandate" to provide a safety rating to every interstate motor carrier. FHWA uses the SR process to determine the safety fitness of motor carriers. This process is underpinned by DOT's desire to rate all unrated interstate motor carriers—not on which motor carriers pose the greatest safety risks.

It is unclear that Congress wanted FHWA to conduct a safety review on or to determine a safety rating for every interstate motor carrier. P.L. 98-554 does not specifically direct FHWA to conduct safety ratings on all interstate commercial motor carriers. But rather, the Motor Carrier Safety Act of 1984 requires the cre-

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[58] Personal communication with FHWA, staff 1988.
[59] U.S. Dept. of Transportation. FHWA. Fitness Procedures, p. 50969.

ation of a *procedure* to determine the safety fitness of owners and operators of commercial motor vehicles. Furthermore, the legislative history specifies the universe of carriers to be covered by the initial safety fitness requirements. These requirements pertain to:

> new carriers seeking common or contract carrier authority, existing carriers seeking an expansion of their common or contract authority, and private carriers seeking for-hire authority. All such carriers must meet the fitness test before being allowed to obtain operating authority, and of course are subject to the continuing safety fitness requirement.[60]

It appears that a major intent of this provision was to ensure that there was close cooperation between FHWA and the Interstate Commerce Commission.[61] Thus, neither the statute or its legislative history appear to mandate a safety rating for every motor carrier subject to FHWA's jurisdiction.

Regardless of congressional intent, FHWA now considers it its mandate to conduct a SR and to determine a safety fitness rating for every motor carrier. FHWA has never issued a written legal analysis supporting DOT's notion that FHWA has a "mandate" to rate all motor carriers.

Is Compliance Being Raised as a Result of the SR Process?

The SR program is definitely increasing many carriers' level of awareness of the Federal safety regulations. Many motor carriers that did not even know that they were subject to FHWA's safety regulations now have been informed of their responsibilities as a result of the SR program.

The extent to which the SR program has actually raised the level of compliance with the Federal safety regulations remains uncertain. For many carriers, it probably has helped a great deal. But, many other carriers do not take the SR process seriously. During follow-up second visits, FHWA safety specialists continue to find serious compliance problems at many of these carriers.

The FHWA has collected accident and other data on all carriers which have been the subject of safety and compliance reviews during the past three years. No meaningful analysis of this data has yet been undertaken by FHWA to attempt to determine program effectiveness. FHWA indicates that there are problems using these data for purposes of multi-year comparisons. Within-year comparisons, however, are possible.

Problems or Issues of Concern Regarding the SR Process

As discussed below, there are several fundamental concerns associated with the safety review process:

1. The quality or validity of information obtained during a SR can be subject to serious question. Consequently, some safety ratings may be based on inaccurate information.

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[60] U.S. Code Congressional and Administrative News. 98th Cong., 2d Sess., p. 4800.

[61] Based in part on discussion with Senate Counsel who worked on the Motor Carrier Safety Act of 1984.

FHWA's safety review process remains the subject of much controversy. Some have even nicknamed the safety review the "social hour" because it usually consists of a friendly conversation about the safety practices of a motor carrier.

The safety review process has also been criticized because it does not allow nor is it intended to go into much detail on the extent of noncompliance. The SR does not allow nor is it intended for the FHWA safety specialist to dig into the safety practices and records of the motor carrier as does the compliance review. In contrast to the older, standard safety management audit, which FHWA conducted for many years, the SR requires only a cursory review of safety records and does not require the type of indepth review needed to document the actual extent and nature of noncompliance.

For example, a major factor that is considered in the safety review/rating process is past accident information. This is viewed as an indicator of possible systemic problems that could impair a carrier's safety fitness. However, based on discussions with several FHWA safety specialists who have conducted hundreds of SRs, there appears to be little verification of the accident data obtained from the motor carrier. FHWA does not require the motor carrier to sign a document indicating that the information supplied is accurate. Furthermore, FHWA safety investigators are not required to call the insurance company of a motor carrier or to seek accident claim data from the insurer. One safety investigator stated that in roughly 10 percent of the cases or less the insurance company is asked to verify the accident data reported by the motor carrier.[62]

The SR process also does not currently make effective use of information obtained by State enforcement officials. Roadside inspection data obtained by State safety officers are important indicators for identifying carriers posing the greatest safety risk. The validity of safety fitness determinations derived from SRs would be enhanced by using such State-generated information. When FHWA's SAFETYNET system becomes more operational, FHWA will be able to use MCSAP inspection reports more effectively.

The NTSB has also expressed its reservations about the SR process. It stated:

> However, the Safety Board is concerned that a 4-hour initial safety review will not be adequate to identify many of the carriers failing to comply with the Federal regulations, even through their written procedures and systems suggest that they are properly organized to comply with the regulations. Even if OMCS agents are able to adequately review most of the carriers for which they are responsible, it is unlikely that the agents will also have the time to travel from one site to the next, to perform the detailed follow-up compliance reviews on the carriers rated

[62] Personal communication with FHWA staff, 1988. If a safety investigator had reason to doubt the accuracy of information supplied by a motor carrier, the investigator might call the insurance company.

as less than satisfactory in the initial review, and to perform the other duties required of them.[63]

2. The SR process generally lacks any enforcement clout.

Many in industry know that the SR is basically a "freebie" during which the commercial motor carrier gets a public safety consultant to review briefly its safety management systems free of charge. Many know that it is highly unlikely that any enforcement action will be taken by FHWA as a result of specific safety violations noted during a safety review. The only enforcement action that would likely ever be taken as a result of these reviews would involve violations of financial responsibility regulations, e.g., that a motor carrier did not have required endorsements to substantiate that it had the specified amount of liability insurance. Even in these cases, FHWA tries not to resort to bringing an enforcement action against a carrier for this type of violation. FHWA tells the motor carrier that if it submits in 10 days the proper documentation that proves that it has the correct amount of insurance, no enforcement action will be taken.[64] In rare cases, when acute violations are found, an enforcement case might result.

3. The ratings are not sufficiently informative to the public (e.g., shippers and insurance companies) of the safety fitness of a motor carrier.

FHWA assigns a conditional safety rating to roughly 44 percent of the motor carriers it reviews. The category is so broad and the definition of conditionally-rated carrier is so vague that this classification is not that useful from a safety perspective. Is the conditionally rated carrier closer to being unsatisfactory or did it just miss getting a satisfactory rating? (The option of instituting a more informative or a quantitative safety rating is presented in the last chapter of this report.)

4. The validity of some conditional safety ratings are subject to serious question; however, no rating system is perfect.

Some of the carriers that receive a conditional safety rating under FHWA's existing system might easily receive an unsatisfactory rating under a different rating process. For example, FHWA recently assigned a conditional rating to a motor carrier that FHWA had determined to lack many safety systems needed to ensure compliance with the basic safety regulations. Even though FHWA had determined that this motor carrier did not properly test all of its drivers before hiring them, did not always properly review driver records and violations received each year, could not explain the written test certification process, had two accidents of which one was judged by FHWA to be preventable within the last year, did not always maintain completed driver qualification files, had several of its trucks taken out-of-service because of serious safety violations found during roadside inspections, did not always comply with FHWA's vehicle inspection procedures, and had not established a system to effectively control the hours-of-service requirements for its drivers, FHWA assigned a conditional safety

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[63] National Transportation Safety Board. Highway Accident Report. NTSB/HAR-87/04. p. 14.

[64] FHWA might bring an enforcement action against the management of a new carrier if FHWA had previous contact with the same management personnel who were then employed by a different carrier.

rating to this motor carrier. Under a more rigorous rating system, this carrier could easily have been rated "unsatisfactory."

A review of numerous safety ratings indicated that there are many conditionally rated carriers that would receive an unsatisfactory rating under a different rating system. When developing its rating system, FHWA had to make some difficult choices. It tried to develop a process that would prioritize the carriers most in need of a follow-up audit. FHWA plans to institute a much tougher rating system that is expected to assign an unsatisfactory safety rating to a larger percentage of carriers than is assigned under its current system.

5. The SR program may be focusing FHWA's resources on some carriers that do not merit immediate attention.

By pursuing the current SR strategy, FHWA is focusing much of its resources on small-sized carriers, those with comparatively few vehicles and drivers. For many of the small-sized carriers, there is no prior evidence of noncompliance. Some of these carriers certainly do not pose the greatest safety risks facing FHWA's limited resources. One could question whether FHWA should be devoting more attention to larger-sized carriers, those with many vehicles and drivers, which as a group have a higher accident rate and report more accidents than do smaller-sized carriers. FHWA, however, does need an enforcement presence across the spectrum of carrier sizes.

One of the major purposes of FHWA's program is to reduce the number of accidents involving commercial motor carriers. Does the SR program help promote this objective in a cost-effective manner? (This issue is further discussed in detail in a later section of this report).

6. The SR program is adding to FHWA's workload problem.

As a result of the SR process, FHWA has identified thousands of carriers that are in less than satisfactory compliance with the Federal safety requirements. Most of these carriers are small- to medium-sized carriers. Without adversely affecting its other activities, FHWA does not have the manpower to conduct follow-up visits on many of these carriers until the late 1990s, at the earliest. Why should FHWA spend roughly 40 percent of its regional (nonmanagement) motor carrier staff time identifying carriers with substantial safety problems without the resources to go back and audit them in a timely manner? (The workload situation is discussed in detail in a later section of this report.)

7. The current SR program will drain FHWA's resources for many years.

Given its current policies and resources, FHWA is likely to continue for many years to spend an enormous amount of its time trying to rate all interstate motor carriers. The policy issue is: Can FHWA afford to continue to spend roughly 40 percent of the time of its regional nonmanagement motor carrier safety staff on SRs?

FHWA's estimate of the number of unrated interstate motor carriers that remain to be rated is staggering—at least 120,000. The actual number of carriers that need to be rated is probably much larger, because of the large turnover of this industry.

Motor carriers, especially small-sized companies with less than seven drivers are frequently going out of business, and many new

corporate entities are entering the trucking business. The number of new carriers added to the census each year is substantial. According to the FHWA, in 1986, 11,254 new carriers were added; 19,358 in 1987; and 28,579 in 1988.

These data suggest that the safety review process will continue to be a substantial drain on FHWA's resources throughout the next decade and perhaps beyond unless an additional 150 safety specialists are funded. This prediction stands even if FHWA continues to receive help from the States. Some 28 States are involved actively in the SR program: other States do not want to participate or currently will not because of financial limitations.

FHWA might need to reevaluate its decision to rate all interstate motor carriers. Perhaps, a more focused safety rating program might be considered that only rates motor carriers applying before the ICC, carriers of hazardous materials, carriers of munitions for the Department of Defense or passengers, carriers of vehicles or drivers performing poorly at roadside inspections, and carriers involved in specified accidents or hazardous materials incidents. Perhaps, those carriers with the worst performance should be rated first.

Selective Compliance and Enforcement Program (SCE)

The SCE is another step used by FHWA to help prioritize which carriers and shippers receive further attention, i.e., who gets audited next. The purpose of SCE is " to establish an operational program which continually focuses the compliance and enforcement resources of the Federal Motor Carrier Safety Program (FMCSP) toward motor carriers and hazardous materials shippers having the greatest need for improvement regarding regulatory compliance and commercial motor vehicle accident experience."[65] The SCE system is the most comprehensive and nationally uniform system that FHWA has ever developed to prioritize the auditing of motor carriers that need additional attention by the FHWA. The SCE system has been pilot tested by the FHWA, and the system has been adopted on a nationwide basis as of October 1, 1988.

Examples of actions that may be taken under the Selective Compliance and Enforcement Program include, but are not limited to, the following:

—providing additional educational and technical assistance;
—requiring the motor carrier to develop a safety plan and implement safety management controls to meet the safety fitness standard;
—initiating combined (or separate) Federal and State compliance and enforcement activities with State counterparts participating in the MCSAP;
—intervening for safety reasons in ICC actions pertaining to operational authority;
—disqualifying all or some of the drivers used by a motor carrier;
—issuing a written order to cease certain operations; or

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[65] FHWA. Motor Carrier Safety Manual. Selective Compliance and Enforcement (SCE) Program. p. 1.

—initiating successive civil or criminal actions with increasingly higher fines for continued noncompliance.[66]

Carriers that receive a conditional or an unsatisfactory safety rating from FHWA are placed in its SCE program. Carriers with an unsatisfactory safety rating are given the highest priority for a follow-up compliance review (CR). (The CR is discussed further in the next section.) As a result of being placed in this program, a carrier with an unsatisfactory rating can expect FHWA to conduct a compliance review (described below) on it during the next two years.

As a result of the follow-up CR, the previously assigned safety rating of the motor carrier is reviewed, and changes can be made. If the second rating is less than satisfactory, the carrier is scheduled for another CR. This process continues until a satisfactory rating is obtained or until the carrier goes out of business.

Certain shippers of hazardous materials are also placed into FHWA's SCE. FHWA uses several sources to identify shippers in need of additional attention. These include: records of past enforcement actions taken against shippers, State enforcement reports or referrals, complaints from carriers, and lists of shippers involved in reportable hazardous materials incidents since 1984.[67]

Because FHWA does not have a safety rating program for shippers, its method of identifying shippers for SCE is much less systematic than its method for identifying carriers in need of additional attention. The lack of a comprehensive priority system to determine which shippers should be audited is addressed further in the next chapter.

Compliance Reviews

The auditing or compliance review function performed by the FHWA safety specialists is of major importance. It is the only strategy available to examine in-depth the total safety systems of a motor carrier. These safety audits or compliance reviews get at the heart of motor carrier safety. As a result of conducting a comprehensive CR, a FHWA safety specialist can obtain a thorough understanding of the safety practices and level of compliance of a motor carrier with the safety regulations.

Compliance reviews (CR) are field investigations that are primarily conducted on motor carriers that have been assigned less than satisfactory safety ratings. According to FHWA, the scheduling of CR's is prioritized based on whether the rating is "conditional" or "unsatisfactory". Unless other circumstances warrant it, FHWA's policy at this time is to address "unsatisfactory" carriers before "conditional" carriers . . .[68] Some CRs are also performed on shippers of hazardous materials.

In general, the CR consists of an indepth audit focusing on previously identified areas of noncompliance with the safety regulations. During the CR, all parts of the regulations in which FHWA has judged that the motor carrier has achieved a less than satisfactory level of compliance and all other known or alleged areas of non-

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[66] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures, p. 50965.
[67] U.S. Dept. of Transportation. FHWA. Internal Memorandum, Nov. 2, 1987. p. 2.
[68] Ibid.

compliance are supposed to be reviewed for improvement. Compliance reviews are more focused reviews of a carrier's operations than were previously conducted by FHWA under its older safety management audit system. The CR is the primary mechanism that FHWA uses to collect and document information that is used in enforcement cases brought against motor carriers.

One type of CR is a specified compliance review that is performed in response to a written complaint registered with FHWA. In this type of compliance review, the safety investigator focuses on the allegations raised in the complaint by checking for compliance with those parts of the safety regulations that are addressed in the complaint. Other previously identified areas of noncompliance also are to be examined. When one considers that the safety investigator could spend roughly one to two hours travelling to the motor carrier, it appears that this policy is rather inefficient. In many cases, the FHWA safety official could likely document many more violations in areas that are not addressed in the complaint or have previously been judged to be satisfactory, but this is unlikely to happen because these areas are unlikely to be examined. FHWA maintains this policy because it believes this strategy is more efficient than reexamining the total operation of a carrier. FHWA does not inform the motor carrier that a complaint triggered the CR.

During FY 1988, FHWA spent less than one-third of its region (nonmanagement) motor carrier staff time on compliance reviews. FHWA estimates that a CR with the resulting enforcement activity takes an average of 28.4 staff hours.[69]

Commercial Accident Prevention and Evaluation Program (CAPE)

Motor carriers that meet FHWA's safety fitness standard, but are having too many preventable accidents, are eligible for additional technical assistance under the CAPE. The purpose of CAPE is to encourage motor carriers with preventable/reportable accident ratios greater than 50 percent to participate voluntarily in a program designed to reduce the likelihood or risk of future preventable accidents. This program includes only motor carriers with a satisfactory rating. More specifically, this program is designed to identify accident/incident problems by analyzing motor carrier/shipper accident data. According to FHWA, appropriate countermeasure activities will then be developed to reduce the future rate of accidents/incidents. Accident and incident data will be acquired from both FHWA's management information systems and from SAFETYNET. A schematic of CAPE is presented in figure 3.

FHWA has designed this program as a highly specialized educational program, it is not an enforcement effort. When conducting the CAPE, FHWA safety specialists are to identify accident causal factors and to identify and tailor accident countermeasures specific to the conditions existing in the operations of a specific motor carrier.

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[69] Internal FHWA report entitled "Motor Carrier Safety Staffing/Workload Assessment, June 30, 1988. p. 2.

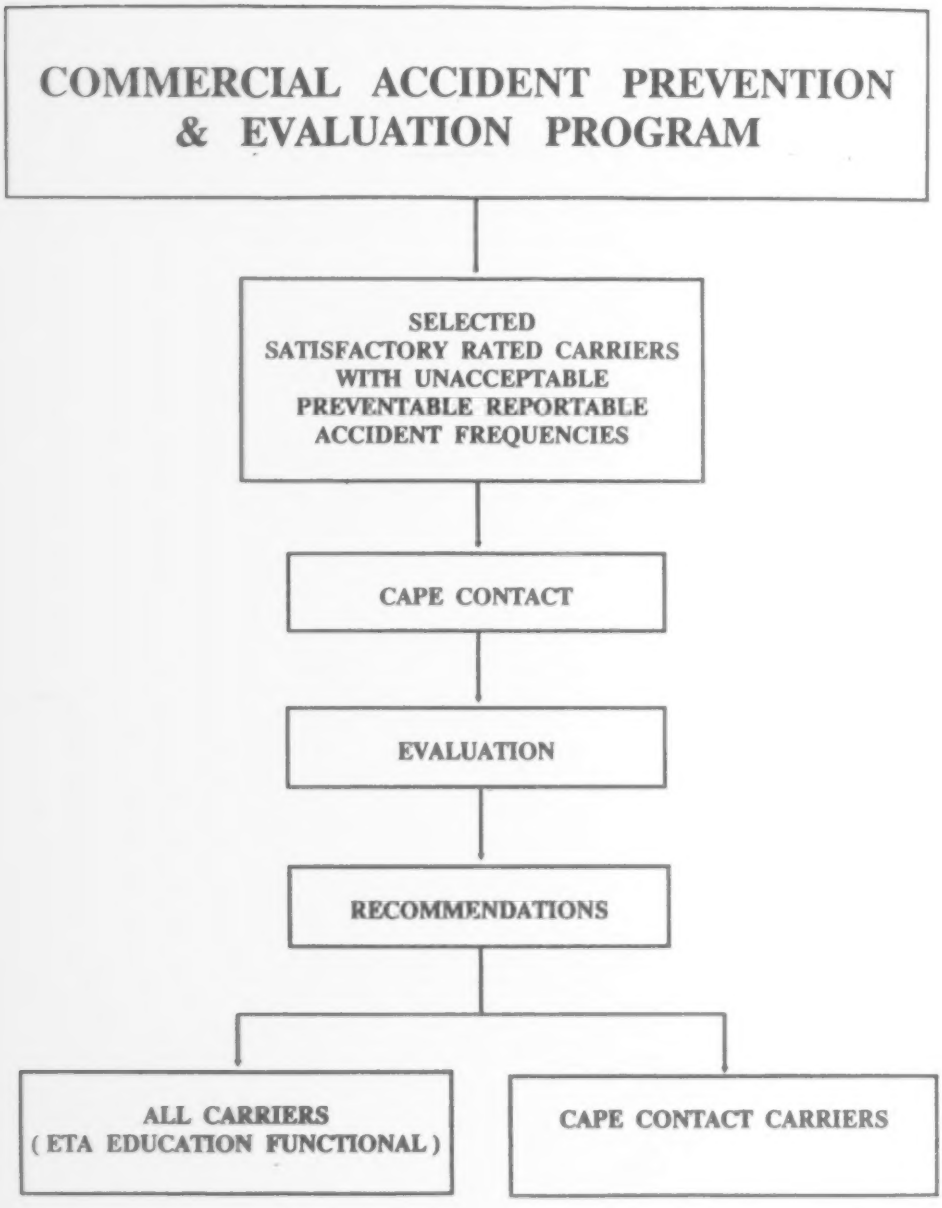
FY89 Short Range National Objectives

The national objectives for FHWA's Motor Carrier Safety Annual Work Plan for FY 1989 are presented in table 9. These are instructive because they illustrate how FHWA's tries to maximize the use of the various programs discussed in this chapter.

Total Integrated Program

Figures 4 and 5 present a schematic of how FHWA's various program components—SCE, ETA, CAPE, SR and CR—are supposed to fit together. Figures 6–10 illustrate several FHWA regional motor carrier safety activities. All photographs were supplied by FHWA.

FIGURE 3. CAPE


COMMERCIAL ACCIDENT PREVENTION & EVALUATION PROGRAM
SELECTED SATISFACTORY RATED CARRIERS WITH UNACCEPTABLE PREVENTABLE REPORTABLE ACCIDENT FREQUENCIES
CAPE CONTACT
EVALUATION
RECOMMENDATIONS
ALL CARRIERS (ETA EDUCATION FUNCTIONAL)
CAPE CONTACT CARRIERS

CRS-88

FIGURE 4. National Federal Motor Carrier Safety Program

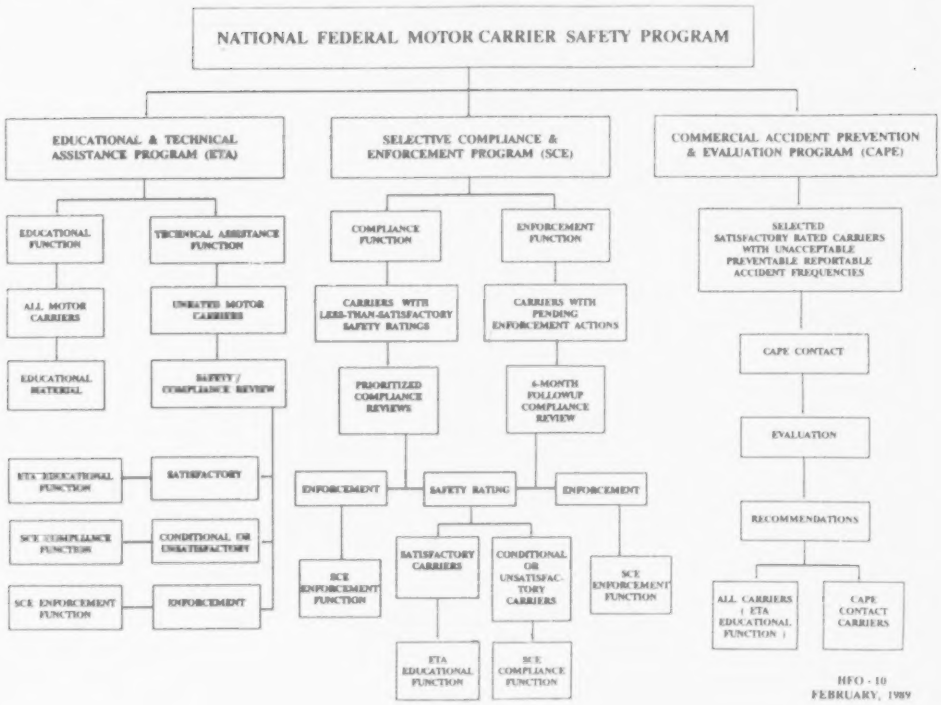
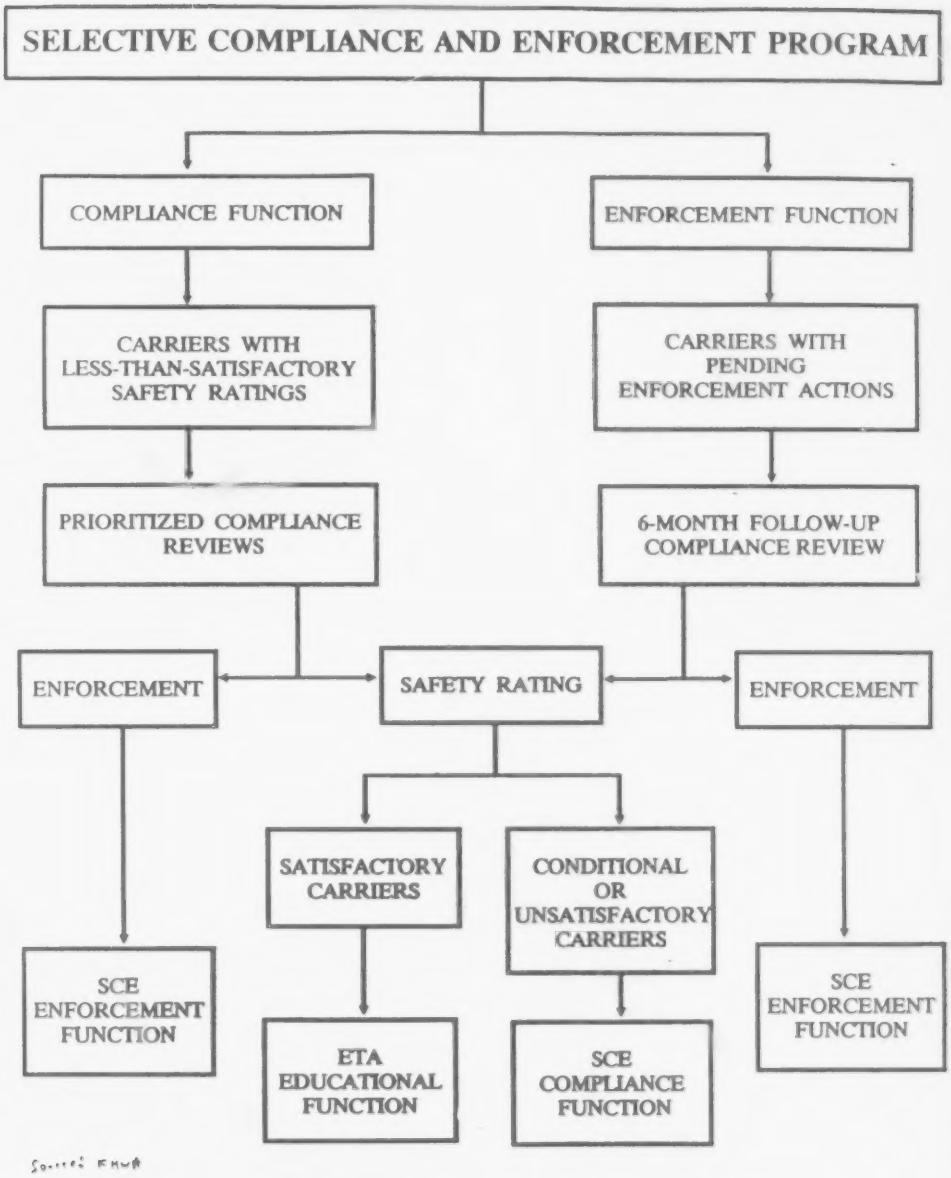


FIGURE 5. Selective Compliance and Enforcement Program



Source: FHWA

NOTE: 1. ALL COMPLIANCE REVIEWS OF PRINCIPAL PLACE OF BUSINESS ARE RATED.
2. PROSECUTIONS SUPERCEDE RATINGS IN SCE FUNCTION ASSIGNMENTS.
3. SELECTED HAZARDOUS MATERIALS SHIPPERS ARE ALSO INCLUDED IN THE COMPLIANCE AND ENFORCEMENT FUNCTIONS OF SCE BUT CURRENTLY ARE NOT ASSIGNED SAFETY RATINGS.

TABLE 9. FY89 SHORT RANGE NATIONAL OBJECTIVES

1. To improve the level of compliance of motor carriers rated "unsatisfactory" through full implementation of the Selective Compliance and Enforcement (SCE) Program.

2. To identify, educate, and rate motor carriers through full implementation of Educational and Technical Assistance (ETA) Program with a view to accomplishing the task by July 1, 1990.

3. To reduce the rate of motor carrier involvement in preventable accidents through full implementation of the Commercial Accident Prevention and Evaluation (CAPE) Program.

4. To reduce the number of commercial motor vehicle drivers operating with suspended, revoked, or multiple licenses through full implementation of revised Commercial

rivers License (CDL) compliance procedures.

5. To promote nationally uniform/consistent regulations and compliance activities by each state for interstate, intrastate, and "intra-city exempt zones" through the Motor Carrier Safety Assistance Program (MCSAP). To promote Safety Review, CDL, and Drug Enforcement Initiatives by states under MCSAP.

6. To identify hazardous materials highway transportation concerns, to develop and implement countermeasures for those concerns and to educate industry and state/Federal enforcement personnel in the regulatory requirements for transporting hazardous materials.

7. To develop and implement a comprehensive motor carrier safety drug enforcement program in order to minimize the number of commercial motor vehicle accidents having drug related causes. The program is also intended to reduce the involvement of motor carriers in the transportation, distribution and consumption of illegal drugs.

FIGURE 6. Federal motor safety program specialist and technical support personnel input accident analysis information.

FIGURE 7. Federal safety specialist inspects packaging and labeling of corrosive material as it is being readied for carrier loading at terminal.

FIGURE 8. Transportation Safety Institute (TSI) at Oklahoma City where classroom training for the Federal motor carrier safety program is conducted.

FIGURE 9. Federal and State motor carrier personnel are receiving training at TSI in aspects of the Federal motor carrier safety and hazardous materials transportation regulations.

FIGURE 10. Federal motor carrier specialist and terminal manager review driver logs.

KEY POLICY ISSUES PERTAINING TO FHWA'S EDUCATION AND ENFORCEMENT PROGRAM

This chapter considers five key policy issues pertaining to FHWA's education and enforcement program:

1. Does FHWA have sufficient staff to accomplish the safety responsibilities that Congress and the Secretary of Transportation have assigned to it?
2. Are FHWA's safety specialists paying enough attention to the enforcement of hazardous materials transportation safety regulations?
3. Relative to other modes of transportation, is the Federal Government spending a proportional amount on the enforcement of commercial motor vehicle safety regulations?
4. Are FHWA's safety specialists focusing on the motor carriers most in need of attention?
5. Should FHWA continue its practice of generally requiring prior contact before an enforcement action is brought against a motor carrier for violations of the Federal safety regulations?

Workload of FHWA's Motor Carrier Safety Education and Enforcement Program

The number of carriers that allegedly are not in compliance with the Federal safety regulations is so large and the number of FHWA safety specialists is so small, that the workload facing FHWA is absolutely staggering. FHWA's workload situation is best analyzed by considering the safety and compliance review backlogs.

FHWA estimates that there are roughly 180,000 carriers of property and persons and 25,000 shippers of hazardous materials under its jurisdiction. To date, approximately one-third of these carriers have received a safety rating. FHWA had hoped to rate all of these carriers by 1990, but with its current manpower and policies, this goal appears unlikely to be achieved before 2002 at the earliest.

Given its current resources and policies, it will literally be at least 10 years before FHWA can audit, i.e., conduct a compliance review (CR), on all of the motor carriers that FHWA has determined are in need of a follow-up investigation. These carriers include all carriers that have received an unsatisfactory or a conditional safety rating. Given the current resources and program strategies, it is highly doubtful that FHWA could visit each of the unsatisfactory-rated carriers that it has already identified as needing attention once every year and one-half.

How does FHWA spend its time on motor carrier safety activities? Table 10 presents the historical workload of the Office of Motor Carriers. Table 11 presents FHWA's workload accomplishments for FY 1988 and its projections for FY 1989. This table illustrates the diversity of the activities that FHWA safety specialists

conduct. Table 12 presents FHWA's seven-year projection of SR and CR activity based on its current level of staffing. These data, which are based on rather optimistic appraisals of FHWA's likely work output, suggest that FHWA will be further behind in conducting its compliance/enforcement program in 1995 than it is today. It is assumed that if no additional FHWA staff are funded, FHWA's current backlog of carriers that need to be audited will at least double by 1995. Table 13 shows these same workloads but it assumes that FHWA is able to hire an additional 150 safety specialists. Again these projections on FHWA's possible accomplishments are probably overly optimistic.

The workload situation facing FHWA is only likely to get worst if FHWA changes its current safety rating process as planned. FHWA has been evaluating a revised rating system that would increase the percentage of carriers rated in the unsatisfactory or conditional categories from 45 to 60 percent. Table 14 shows FHWA's projected backlog under this scenario.

The resource or manpower problem is among the highest priority concerns that Congress may wish to address as it reviews the FHWA education and enforcement program. FHWA's resources are so limited; FHWA can barely *begin* to address the safety problems that have been identified in the motor carrier and hazardous materials shipper industries under its jurisdiction. In view of the size and high turnover rate of the motor carrier industry and the alleged wide-spread noncompliance with safety regulations by many carriers, the FHWA does not have the resources to perform effectively even a small portion of the safety activities that have been assigned to it.

The manpower problems facing FHWA will only increase as Congress continues to add new responsibilities, such as elimination of the commercial zone exemption, enforcement of the commercial drivers licensing requirements, new authorities and responsibilities expected under legislation that will reauthorize the Hazardous Materials Transportation Act of 1975, and other legislative measures to be enacted. Increased pressure for more drug enforcement will also add to FHWA's workload.

TABLE 10.—OFFICE OF MOTOR CARRIERS WORKLOAD DATA

	Fiscal year—						
	1981	1982	1983	1984	1985	1986	1987
Number of driver/vehicle inspections	40,875	35,825	26,015	22,590	16,046	10,027	910
Number of safety audit/reviews	9,640	12,095	11,666	13,037	10,492	6,637	23,714
Number of investigations [1]	1,885	1,570	1,511	1,731	2,316	2,590	885
Number of enforcement cases prosecuted and closed	417	322	461	474	739	529	568
Amount of fines collected	$1,138,700	$711,802	$447,731	$795,805	$788,916	$1,877,300	$2,028,615

[1] Beginning in fiscal year 1987, investigations without evidence are included in safety audits/reviews.
Source: FHWA.

TABLE 11.—FHWA'S MOTOR CARRIER SAFETY ACCOMPLISHMENTS FOR FY88 AND PROJECTIONS FOR FY89

Work item description	Fiscal year—	
	1988 accomplishments	1989 annual work plan
Educational and technical assistance:		
SR–1 carrier	22,111	22,201
SR–1 H/M carrier	2,755	3,019
Safety or H/M meetings	650	405
Program assistance		
Special projects		
Training presented		3
Driver waiver exam	107	194
Divided records authority		
Public inquiries	103,183	53,396
Carriers added	21,689	10,338
Carriers deleted	40,990	9,212
Selective compliance enforcement:		
Enforcement report—MCSR	775	852
Enforcement report—H/M	24	150
Enforcement report—MCSR–H/M	45	162
Enforcement report—drivers/other	75	76
Enforcement report—assist	203	145
CR–1 large	351	339
CR–1 medium	841	1,437
CR–1 small	2,112	3,886
CR–1 H/M carrier	961	1,014
CR–1 H/M shipper	524	718
CR–1 cargo tank manufacturer	3	9
CR–1 (Intra) financial resp. review	87	98
Complaint investigations—driver	430	346
Complaint investigations—other	443	155
Complaint investigations—State	40	14
Driver/vehicle examinations	189	243
Out-of-service vehicles	58	
Out-of-service drivers	54	
Out-of-service buses	49	85
Out-of-service bus drivers	2	
Driver/vehicle exam—bus	3	
Other drivers disqualified	190	71
Monitoring and evaluating SCE	18	51
Commercial accident prevention evaluation:		
Number of carriers identified	60	128
CAPE contacts	34	92
Accident investigations	41	36
Monitoring and evaluating CAPE	18	51
MCSAP:		
State and local technical assistance		
State and local training presented		
State and local monitoring/evaluation		
State SR–1	2,575	9,437
State CR–1	63	875
Quarterly reports submitted	113	104
Commercial driver license:		
Number licenses returned to States	10,899	5,005
Number entered on complaint register	6,495	21
Number of enforcement actions	45	55
Unqualified driver letters issued	726	477
Disqualification of driver letters	2,891	924

Source: FHWA.

TABLE 12.—SR-1 WORKLOAD—CURRENT STAFF

Year	1989	1990	1991	1992	1993	1994	1995
Start	125,000	119,875	113,250	106,625	100,000	93,375	86,750
Completed:							
FHWA	22,125	22,125	22,125	22,125	22,125	22,125	22,125
State	3,000	4,500	4,500	4,500	4,500	4,500	4,500
Total	25,125	26,625	26,625	26,625	26,625	26,625	26,625
New Carriers	20,000	20,000	20,000	20,000	20,000	20,000	20,000
End of year	119,875	113,250	106,625	100,000	93,375	86,750	80,125

CR-1 WORKLOAD—45 PERCENT U. & C. RATINGS—CURRENT STAFF

Year	1989	1990	1991	1992	1993	1994	1995
Start	29,000	34,522	40,719	46,916	53,113	59,310	65,507
Completed	5,784	5,784	5,784	5,784	5,784	5,784	5,784
Additional CR-1's from 45 percent SR-1's	11,306	11,981	11,981	11,981	11,981	11,981	11,981
End	34,522	40,719	46,916	53,113	59,310	65,507	71,704
Enforcement cases	1,157	1,157	1,157	1,157	1,157	1,157	1,157

Source: FHWA.

TABLE 13.—SR-1 WORKLOAD—PLUS 150 S. SPEC.

Year	1989	1990	1991	1992	1993	1994	1995
Start	125,000	119,875	80,062	40,249	436		
Completed:							
FHWA	22,125	55,313	55,313	55,313	15,937		
State	3,000	4,500	4,500	4,500	4,500		
Total	25,125	59,813	59,813	59,813	20,437	20,000	20,000
New carriers	20,000	20,000	20,000	20,000	20,000	20,000	20,000
End of year	119,875	80,062	40,249	436			

CR-1 WORKLOAD—45 PERCENT U. & C. RATINGS PLUS 150 S. SPEC.

Year	1989	1990	1991	1992	1993	1994	1995
Start	29,000	34,522	55,654	76,786	97,918	92,458	86,703
Completed	5,784	5,784	5,784	5,784	14,657	14,755	14,755
Additional CR-1's from 45 percent SR-1's	11,306	26,916	26,916	26,916	9,197	9,000	9,000
End	34,522	55,654	76,786	97,918	92,458	86,703	80,948
Enforcement cases	1,157	1,157	1,157	1,157	2,931	2,951	2,951

Source: FHWA.

TABLE 14.—CR-1 WORKLOAD—60 PERCENT U. & C. RATINGS—CURRENT STAFF

Year	1989	1990	1991	1992	1993	1994	1995
Start	29,000	38,291	48,482	58,673	68,864	79,055	89,246
Completed	5,784	5,784	5,784	5,784	5,784	5,784	5,784
Additional CR-1's from 60 SR-1's	15,075	15,975	15,975	15,975	15,975	15,975	15,975
End	38,291	48,482	58,673	68,864	79,055	89,246	99,437

CR-1 WORKLOAD—60 PERCENT U. & C. RATINGS PLUS 150 S. SPEC

Year	1989	1990	1991	1992	1993	1994	1995
Start	29,000	38,291	68,395	98,499	128,603	126,208	123,453
Completed	5,784	5,784	5,784	5,784	14,657	14,755	14,755
Additional CR-1's from 60 percent SR-1's	15,075	35,888	35,888	35,888	12,262	12,000	12,000
End	38,291	68,395	98,499	128,603	126,208	123,453	120,698

Source: FHWA

Minimal or Perhaps Inadequate Attention to Hazardous Materials Transportation Safety

There is overwhelming evidence that FHWA has not, and probably could not given its current resources, devote the level of attention to hazardous materials transportation that many would judge necessary. For example, even though there are over 1200 motor carriers that are currently transporting hazardous materials that have received an unsatisfactory safety rating from the FHWA, FHWA has never used the authority provided in the Motor Carrier Safety Act of 1984 to shut down any of these motor carriers.[70] (If FHWA had judged the operation of any of these carriers to be imminently hazardous, they could have shut down its operations.)[71] Some of these hazardous materials motor carriers with unsatisfactory ratings have not been audited by FHWA since 1980; many more have not been visited by FHWA since the early 1980s.[72] In addition, as indicated in table 7, the number of enforcement cases recommended for prosecution against those charged with violations of the Federal hazardous materials transportation regulations has actually decreased in recent years. As indicated below, the amount of civil penalties collected by the FHWA for cases involving violations of the Federal hazardous materials transportation regulations has been decreasing in recent years.

FY 1985	FY 1986	FY 1987
$437,225	$366,500	$292,300

This decline in civil penalties certainly should not suggest that the level of compliance with these safety regulations nationwide has increased in recent years.

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[70] As of Mar. 1989.

[71] "Imminently hazardous" means any condition of vehicle, employee, or commercial operations which is likely to result in serious injury or death if not discontinued immediately. This provision to shut down the operation of a motor carrier pertains to all motor carriers subject to FHWA's jurisdiction, not just those transporting hazardous materials.

[72] As of a Jan. 1989 computer run.

During FY 1988 FHWA did conduct some 961 compliance reviews of carriers transporting hazardous materials. There are at least 17,000 carriers transporting hazardous materials that are subject to FHWA's jurisdiction.

There are literally thousands of shippers of hazardous materials that FHWA has jurisdiction over that have not been audited in many years. During FY 1988, FHWA safety specialists were able to audit, e.g., conduct compliance reviews, on almost 525 shippers of hazardous materials; however, there are roughly another 25,000 shippers that are under its jurisdiction. Unlike the Federal Railroad Administration which has 34 hazardous materials inspectors who devote roughly 80 percent of their time to this task, FHWA does not have the staff needed to visit even a minimum number of shippers each year.

FHWA points out that carriers of hazardous materials with unsatisfactory safety ratings are major audit targets of their current SCE programs. FHWA expects to review the operation of all of these carriers in the near future; i.e., during fiscal year 1989. This projection appears to be overly optimistic and a more reasonable date may be during fiscal year 1990.

The importance of auditing a sufficient number of shippers each year cannot be overemphasized. An effective enforcement presence is needed to ensure that the basic shipper functions, which include packaging, proper labeling, and preparation of shipping papers, are conducted properly. As was also noted in a 1981 report of the National Transportation Safety Board, FHWA has not developed procedures or data systems that would permit the development of audit selection criteria based on an analysis of the relative risk posed by hazardous materials shippers.[73]

To place this in perspective, it is important to stress that FHWA has many other pressing problems that need to be addressed that result in much greater loss of life and property than does hazardous materials transportation. However, the catastrophic potential of hazardous materials transportation, as well as the public's concern about these shipments, is large and ever present. FHWA is undertaking many efforts to improve its hazardous materials activities. The reestablishment of a Hazardous Materials Transportation Program Manager in each of FHWA's regions should help improve the effectiveness of FHWA's hazardous materials activities.

FHWA also has started a new Hazardous Materials Division at FHWA's headquarters. This division will seek to integrate strengthened or new HM [hazardous materials] efforts into ongoing SCE, ETA, and CAPE activities. FHWA headquarters has recommended that activities should account for at least 10 percent of the time devoted to SCE and ETA during FY 1989. This unit is seeking to improve the HM capabilities throughout the FHWA's motor carrier effort. It is fostering improved HM planning at FHWA, technical and regulatory expertise, new training courses, and increased emphasis of specific classes or types of HM carriers.[74]

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[73] National Transportation Safety Board. Federal and State Enforcement Efforts in Hazardous Materials Transportation by Truck. Feb. 19, 1981. p. 92.

[74] U.S. DOT. FHWA. Office of Motor Carriers. Hazardous Materials Program, 1989–1991.

Relative to Other Modes, is the Enforcement of Truck and Bus Safety Regulations Receiving a Proportional Amount of Federal Funds?

Due to the complexity of this question, a detailed report would be necessary to address this question properly. Accordingly, the analysis presented below should be considered a preliminary effort to address this important question.

Table 15.—NUMBER AND AMOUNT OF FEDERALLY SUPPORTED INSPECTORS AND AMOUNT OF FEDERAL FUNDS FOR INSPECTION/ENFORCEMENT FOR COMMERCIAL RAIL, AIR AND MOTOR CARRIER TRANSPORTATION AS COMPARED TO THE NUMBER OF DEATHS AND INJURIES

	Commercial motor vehicles	Railroad	Commercial aviation
Number of Federal inspectors*	303	325	1,380 [1]
Number of full- and part-time State inspectors partially supported with Federal funds.	800 full-time 2,100 part-time	0 0	0 0
Estimated average annual # of deaths	5,750	1,100 [2]	275 [3]
Estimated average annual # of injuries	160,000	27,000	250
Rough approximate cost of Federal program (FY88 cost).	$61 million of which $14 million for Federal inspectors and $47 million for State inspectors.	$22 million	$67 million

* May include management personnel.

[1] There are a total of approximately 2875 FAA inspectors and related professional personnel. For purposes of this analysis, it has been estimated that approximately 48 percent of their activities are focused on commercial aviation. This number includes approximately 700 staff working out of FAA's national and regional headquarters who conduct some safety-related activities but are not full-time inspectors.

[2] Roughly 90 percent or more of these deaths are at grade crossing accidents or involve trespassers.

[3] The number of airline deaths varies substantially year to year. This number approximates the average yearly death rate over the last 13 years (1975–87), during which time there were several major airline tragedies. In most years there were usually less than 10 reported deaths associated with commercial aviation. This includes only passenger and crew deaths during U.S. fleet flights.

There are many possible approaches to analyzing this question. The approach in this report is to assess whether the amount of Federal funds spent on the enforcement of commercial motor carrier safety, i.e., truck and bus safety, is roughly proportional to the amount of funds spent on the enforcement of rail and commercial aviation safety in light of the number of deaths and injuries associated with these modes are considered. Table 15 presents data that can be evaluated to help address this question.

In terms of the amount of Federal money spent on conducting safety inspections and promoting compliance with the safety regulations, DOT spends more on the enforcement of commercial air safety regulations than it does on the enforcement of regulations pertaining to commercial truck and bus safety.[75] When Federal funding levels are considered in light of the number of deaths and injuries that occur in the various modes of transportation, truck and bus safety receives considerably less funds than do either commercial aviation and rail safety. For example, on average in any given year during the last 13 years (1975–1987), there have been roughly more than 21 times as many deaths resulting from accidents involving truck or buses than there are from commercial aviation accidents; however, more Federal funds are spent on en-

[75] Enforcement is used rather broadly here to include all educational, inspection, and prosecution activities.

forcing commercial aviation safety regulations. It is interesting to note that there are thousands of FAA inspectors for hundreds of air carriers, but there are only hundreds of FHWA inspectors for 180,000 interstate motor carriers. Likewise, the enforcement of commercial motor vehicle safety regulations is underfunded when compared to the amount of Federal funds spent on the enforcement of Federal railroad safety regulations, when the number of relative deaths and injuries is considered.

The wide disparity in the Federal allocation of safety funds has been noted by others. The following discussion was presented in a study proposal of the Transportation Research Board.

> The 5,000 annual deaths in heavy truck accidents represent five times the toll from U.S. commercial and general aviation accidents. U.S. research spending to promote the safety of these two modes is out of balance with these relative magnitudes of losses. Over $200 million is spent annually for research on aviation operations, much of it primarily aimed at enhancing safety, while at most a few million dollars is spent on research on trucking operations and safety.[76]

Are FHWA's Resources Focused on Motor Carriers That Present the Greatest Risk to Safety?

Most of the time spent on FHWA's education and enforcement program is devoted to the conduct of three major activities: safety reviews, compliance reviews conducted under the Selective Enforcement and Compliance Program (SCE), and complaint investigations. Each of these components must first be considered separately to determine which carriers are receiving the most attention. Then, the question can be asked: Are these the carriers that present the greatest risk to safety?

Under its safety review effort, FHWA is spending most of its time on small-sized carriers, less time on medium-sized carriers, and very little time with larger carriers. This is to be expected as the small private motor carriers are generally the ones that have not been rated and because these carriers constitute the majority of the carrier population.

When conducting complaint investigations, FHWA must respond to any nonfrivolous written complaint it receives regardless of whether FHWA believes that the motor carrier warrants a visit. Thus, under current statue, FHWA does not have a choice on where to focus its complaint review activities. Many complaint investigations are lodged against larger carriers that are represented by unions that are aware of the complaint review process. The duty to investigate complaints is specified under section 212 of the Motor Carrier Safety Act of 1984.

The third major activity pertains to compliance reviews conducted under FHWA's Selective Enforcement and Compliance Program (SCE). Currently, this program involves primarily motor carriers that have been rated "unsatisfactory" because they either have the worst compliance records according to FHWA, or were judged to

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[76] Transportation Research Board. Truck Safety Data Needs Study, May 20, 1987. p. 2.

have unsatisfactory safety management systems. Because much of the input for the SCE program comes from the safety review program, which now focuses on small- and medium-sized carriers, much of the future SCE work will also focus on these same sized carriers. Thus, because of the SCE and the safety rating program, much of FHWA's current workload is focused on small- and medium-sized carriers. This focus is not expected to change under existing FHWA policies.

Are these the carriers that present the greatest risk to safety? As explained below, this is an extremely difficult question to address for two major reasons. First, it is difficult to assess which carriers present the greatest risk to safety. Does this mean the carriers that are the most out of compliance with FHWA's regulations? Is it the carriers that have the worst accident rates? Second, a reliable and valid data base needed to address these complex questions is lacking. Despite these limitations, the following preliminary analysis is presented below.

Accident rate data are among the best indicators of determining which size of motor carrier presents the greatest safety risk and should thus be visited by the FHWA. Table 16 shows accident rates by carrier size for calendar years 1985–1987, as compiled by FHWA.

Table 16.—ACCIDENT RATES AND CARRIER SIZE 1985–87 [1]

Carrier size (vehicles)	1985 [2]	1986 [2]	1987 [3]	1987 [4]
1–6	1.19	0.74	0.56	0.55
7–20	1.17	0.84	0.58	0.53
21–100	1.39	0.97	0.68	0.55
101–5000	1.37	1.08	1.24	0.90
Total	1.36	1.01	0.78	

[1] Because of differences in sampling size, types of operations sampled, and sampling methods, year to year comparisons of the accident data rate presented here should not be attempted.
[2] Based on safety management audit data primarily.
[3] SR and CR data.
[4] Just SR data.

$$\text{Accident rate} = \frac{\text{number of accidents}}{\text{number of miles driven}} \times 1{,}000{,}000$$

Source: FHWA.

For the population interviewed, these data show that small carriers generally have lower accident rates than do large carriers. For 1985 and most of 1986, these data are based on interviews of only a small sample of the motor carrier industry. The data for 1987, however, shows the largest data set ever compiled by FHWA in one year. The column showing just safety review data is especially useful because it eliminates compliance review data performed on many carriers with known compliance problems. For all years discussed above, the data were obtained only from those carriers that were visited by FHWA during the years in question.

The validity of accidents rate data, however, is also questionable as it most likely biased in terms of the underreporting of accidents. Also these data have been inconsistently collected over the years 1985–1987 due to the changing audit/review process by FHWA. Reliable data that could be used to convert accident data to accident rate data is extremely difficult to obtain. As a result, some argue

that accident data as an indicator of relative risk can only be used in inference.

The number and percent of motor carrier involved accidents during calendar years 1985–1987 is shown in table 17. The column showing percent of accidents as reported by carriers to FHWA on its 50T form is especially useful because it establishes what is probably a practical upper bound on the ratio of the number of accidents involving larger carriers to those involving smaller carriers. That is, the ratio of the number of accidents reported on 50Ts by the largest carriers to the number reported by the smallest carriers in 1987 is about 7 to 1 (60.2 percent to 8.8 percent) whereas the ratio of the number of accidents reported during a FHWA visit by the largest carriers to the number reported during a FHWA visit by the smallest carriers is only about 2 to 1 (31 percent to 16.4 percent). Although inconsistent for reasons stated above, large ratios of accident numbers reported during a FHWA visit exist for 1985 (22:1) or (60.5 percent to 2.7 percent) and 1986 (15:1) or (63.7 percent to 4.1 percent). Thus, the inference here is that even though the larger carriers are fewer in number, (carriers with more than six power units comprise less than 15 percent of the total number of carriers under FHWA authority), it appears they are involved in the majority of accidents. This remains true even if twice as many accidents were to be reported by the smaller carriers.

Table 17.—ACCIDENT NUMBERS AND PERCENTS BY CARRIER SIZE, 1985–1987

Carrier size (vehicles)	1985 [1]		1986 [1]		1987 [2]		1987 [3]	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
1–6	267	2.7	184	4.1	780	16.4	2,462	8.8
7–20	784	7.9	419	9.2	1,118	23.5	2,201	7.9
21–100	2,881	28.9	1,040	23.0	1,384	29.1	6,435	23.1
>101	6,035	60.5	2,885	63.7	1,473	31.0	16,802	60.2
Total	9,967	100.0	4,528	100.0	4,755	100.0	27,900	100.0

[1] Based on safety management audit data primarily.
[2] SR and CR data.
[3] Carrier reported on Form 50T.
Source: FHWA.

There are also problems with these data. These 50T data are inherently skewed because it is well known that there is significant underreporting of accident data, especially by the smaller carriers, many of which do not know that they must file written reports with FHWA for specified accidents.

Although there are major limitations with both of these tables, these data are the best available. Regardless of whether SR data, CR and SR data, or 50T data or whether accident rate or accident numbers are used, these analyses suggest that FHWA should be spending more of its time on larger carriers. In terms of reducing the probability of an accident occurring, FHWA resources may be more cost effectively used on medium- and large-sized carriers than on small-sized carriers. By conducting compliance reviews on medium- and large-sized carriers, it is possible in roughly the same amount of time to improve the safety practices of many more driv-

ers and the maintenance of many more vehicles than might be affected at a smaller carrier.

Thus, based solely on the data presented above, it appears highly doubtful that FHWA is effectively focusing its existing resources on the most pressing problems in motor carrier safety. FHWA's concentration on "Mom and Pop" trucking companies, e.g., those with less than seven power units, does not appear to be the best use of its scarce resources. Especially when its current workload is considered, FHWA must ensure that its manpower is used in the most cost-effective and efficient manner to have the largest possible impact on promoting motor carrier safety. The evidence and analysis presented in this report does not suggest this is happening.

On the other hand, FHWA simply cannot ignore small-sized carriers. Whether it is cost-effective or not, FHWA needs to have some enforcement presence among all the different types and sizes of commercial motor carriers. FHWA needs to devote its resources to a broad array of carriers because it is trying to raise the overall level of compliance in the industry. Perhaps, FHWA could seek to establish an appropriate balance among the size of carriers visited such that all large carriers are visited periodically, with emphasis on those with safety or compliance problems, while maintaining visibility among the smaller carriers by visiting some of them. The major disadvantage of FHWA spending less time on small-sized carriers is that some of these carriers are unlikely to spend the necessary resources to improve their level of compliance without additional FHWA assistance or enforcement actions. These carriers collectively represent a large portion of commercial traffic, thus posing a major safety risk. Therefore, there would be a tradeoff if FHWA spent less time on educating and bringing enforcement actions against small-sized carriers.

Using readily available information, FHWA is trying to determine which carriers need FHWA's attention first. FHWA cannot, however, substantiate that it is focusing in a cost-effective manner on those specific carriers that pose the largest risk to safety. Part of the key to determining priorities of which carriers need to be audited first is the availability of reliable and comprehensive accident and roadside inspection data. FHWA does not yet have this data, but it soon will, perhaps in two to four years.

There is incomplete reporting of accident data and the information systems and data bases available to FHWA are not yet sufficiently operable to be of maximum value. Because SAFETYNET—the management information system underpinning MCSAP—is not functioning effectively yet, and because FHWA's entire information management systems are not fully functioning, FHWA still does not know which are the worst performing (in terms of accidents or in terms of compliance with regulations) motor carriers under its jurisdiction. Thus, despite advances in computer technology and despite its efforts to try to improve its prioritization strategies, FHWA's priority system of which carriers need to be rated first is still hampered by the lack of useful, reliable and operating national accident and inspection data systems. To a large extent, FHWA is still primarily relying upon Federal data and has thus far been unable to use effectively State data obtained during in-

spections supported with funds from the Motor Carrier Safety Assistance Program.

FHWA is diligently working on improving these computer-based systems that will be useful in helping to identify the worst performing carriers that need attention. During the next two to four years, FHWA will be developing the most quantitative, rational, and systematic method of determining which motor carriers should be visited first that it has ever had.

The Issue of Prior Contact

Using the authorities specified in the Motor Carrier Safety Act of 1984, FHWA can bring an enforcement action against a motor carrier as a result of its first contact with that motor carrier. However, for violations of the safety regulations, this is a highly unlikely event. For all practical purposes, only an extremely small percentage of enforcement cases for safety violations are brought against motor carriers as a result of their first visit from the FHWA.[77]

The general FHWA practice is to make sure that the motor carrier had some prior knowledge of its responsibilities under the Federal motor carrier safety regulations. The FHWA safety specialist is supposed to provide some documentation or evidence in the case file that the motor carrier had some prior contact with FHWA before the enforcement action was initiated. This "guideline" is not to preclude that a case could be brought without this prior contact or establishment of knowledge.

The practice of proving prior knowledge is a carryover from the way FHWA conducted its enforcement activities prior to the Motor Carrier Safety Act of 1984. In most cases, FHWA investigators are still providing documentation of prior knowledge of the regulations as if each case were going to be handled by a U.S. attorney in a Federal court instead of administratively handled by a FHWA Federal Program Manager. Nevertheless, the establishment of prior knowledge can still be viewed as a valuable component in the development of an enforcement case. This is especially true when one considers several of the various factors that must be reviewed in determining the amount of a civil penalty as specified in the Motor Carrier Safety Act of 1984.[78]

As a result of this "prior contact" practice, FHWA usually gives the motor carrier the benefit of the doubt. When the prior visit practice is followed, the motor carrier cannot claim that it did not know that it was subject to the regulations. Prior contact allows FHWA to document in the case file that the motor carrier was previously told that it was responsible for complying with the Federal safety regulations. FHWA employees assert that FHWA achieves a high measure of good will when it first warns a motor carrier and provides a motor carrier with some educational guidance on safety regulations.[79] FHWA views the SR as official notification that the

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[77] There are three primary instances when the first visit "freebie" policy may not be followed:
1) when acute safety violations are found;
2) when FHWA has previously contacted the management of the company, however, at that time they were working for a different company, and
3) when violations pertaining to financial responsibility requirements are detected and not corrected in a timely fashion.

[78] Prior history of violations is one factor that is supposed to be considered.

[79] Personal communication with FHWA staff, 1988.

motor carrier is responsible for complying with the Federal safety regulations.

FHWA claims that it tries to be consistent and uniform in enforcing the Federal safety regulations. FHWA's prior visit policy has the effect of putting all motor carriers on the same basis. This prior knowledge practice and the resulting first visit, which is really a "freebie" not generally subject to enforcement actions, can be considered to be a step in helping to promote compliance. FHWA's experience indicates that many motor carriers improve their degree of compliance after being informed that they are subject to the Federal safety regulations. The prior knowledge policy helps FHWA achieve its goal of uniformity and consistency in its enforcement program.

Enforcement actions are expensive and time consuming, and FHWA tries first to use more cost-effective strategies to accomplish the same objective. FHWA's first visit "freebie" practice is consistent with this cost-containing policy.

Several arguments can be presented against FHWA continuing its first visit "freebie" practice.

1. The resource argument. As previously discussed, FHWA's resources are insufficient to accomplish effectively its safety promoting responsibilities. Given this problem, should FHWA be allowed to continue providing these "freebies"?

2. The fear argument. It can be postulated that more motor carriers might be more inclined to comply with the Federal safety regulations (or at least find out if they were subject to the regulations) if they knew that civil penalties would definitely result each time FHWA documented substantial noncompliance with the safety regulations.

3. The effectiveness argument. It can be argued that FHWA's resources should be devoted primarily toward enforcement because this strategy would more effectively promote compliance than does FHWA's current policy of spending most of its regional time educating motor carriers. If a more vigorous and meaningful enforcement effort were authorized by Congress and instituted by FHWA, the message would quickly spread within the industry. Many companies would make more of effort to find out if they were subject to FHWA's jurisdiction. Enforcement is where the "rubber hits the road."

4. The failure of voluntary compliance argument. Those against FHWA's "freebie" visits might assert that the safety record and the poor compliance record of many carriers is of such concern that FHWA's resources must be focused more effectively on enforcement. GAO concluded in 1977 that FHWA's policy of encouraging voluntary compliance is ineffective.[80]

5. The inconsistency of FHWA's "freebie practice" argument. It can be argued that there is a regulatory, legal, and moral responsibility for those subject to Federal safety regulations to comply with them.

6. The temporary edge from noncompliance argument. Noncompliance can give a motor carrier an economic short term

[80] Comptroller General of the United States. The Federal Motor Carrier Safety Program: Not Yet Achieving What the Congress Wanted. CED-77-62. May 16, 1977. p. 26.

advantage over a motor carrier that is complying with all of the safety requirements. For example, if a motor carrier allows his drivers to drive more hours than allowed or uses drivers that do not meet FHWA's qualification standards, economic advantages may result for the non-complying carrier.

It can be argued that FHWA's "freebie" practice, which does not punish noncompliance, is inconsistent with the regulatory responsibilities that require compliance. It is important to emphasize that noncompliance can result in fatalities and serious injuries and high costs to society.

MCSAP AND FHWA'S EDUCATION AND ENFORCEMENT PROGRAM

This chapter discusses the relationship of the Motor Carrier Safety Assistance Program (MCSAP) to FHWA's motor carrier safety education and enforcement program which is conducted in the field offices of FHWA. The relationship between these two programs is important and bears directly on the question: If Congress wants to reduce the workload on the FHWA and to increase the auditing and review of motor carriers, would increasing funds for MCSAP be an appropriate and effective strategy?

Relationship Between MCSAP and FHWA's Education and Enforcement Program

FHWA's educational and enforcement program and MCSAP complement each other. Although the MCSAP effort does support some limited work on safety and compliance reviews and does include some auditing of motor carriers, most of the MCSAP budget, probably 85 percent, supports the conduct of roadside inspections. In contrast, FHWA safety specialists conduct primarily safety and compliance reviews of interstate motor carriers and relatively few roadside inspections.

These two efforts are closely interrelated, and the distinction is unimportant to many motor carriers and drivers. These programs are simply called the "DOT".

As discussed in detail in a CRS report on MCSAP, the partnership that has developed between the FHWA and some 50 States under MCSAP has, in general, been a proven success.[81] During the creation of MCSAP, it was clearly recognized that because of the minimal size of the Federal work force and because of the other safety tasks that these officers needed to undertake, State inspectors had to be relied upon to undertake the major lead in roadside inspections. MCSAP has accomplished this; there are now more than 1.2 million roadside inspections conducted each year as a result of the Federal/State partnership, called MCSAP.

Because of a variety of constraints, primarily legal and financial, the MCSAP partnership is just beginning to expand into the conduct of SRs, CRs, and safety management audits in most States. During FY 1988, MCSAP funds were used to support the conduct of about 3000 SRs and some 2500 CRs or safety management audits. A few States, such as Oregon, Washington, Michigan, and Missouri, have been heavily involved in auditing activities for many years. Many States, however, are only beginning to train their safety officers to conduct safety reviews and most need to be trained to con-

[81] U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Motor Carrier Safety Assistance Program (MCSAP): Options Intended to Improve a Generally Successful and Cooperative Federal/State Partnership Promoting Truck and Bus Safety, June 1988.

duct CRs. In order to further improve the consistency and compatibility of the Federal education and enforcement efforts with those conducted by State enforcement officials, the Transportation Safety Institute of DOT is developing new training courses to assist State officials conducting SRs and CRs.

FHWA program managers are trying to bring MCSAP-supported compliance reviews or auditing activities and the Federal education and enforcement program closer together so that these two efforts can synergistically strengthen each other. FWHA wants these two federally sponsored activities to be coordinated and consistent with each other. For example, FHWA does not want conflicting education and enforcement actions to be conducted by a State and FHWA. FHWA does not want the rather remote situation to arise in which a Federal safety investigator conducts a safety review that results in a satisfactory safety rating and then soon thereafter, a State officer audits that motor carrier and brings a major enforcement case. Furthermore, FHWA does not want MCSAP-participating States to impose financial penalties as a result of their documenting safety violations during their first visits to a motor carrier without prior knowledge being documented. FHWA wants the State selection of carriers to be audited with MCSAP funds to be coordinated with FHWA's Selective Enforcement and Compliance Program. In addition, FHWA wants MCSAP-funded compliance reviews to be conducted at the principal place of business rather than at the terminals of motor carriers.

MCSAP States that have been conducting audits for years argue that they have much to offer in shaping a national education and enforcement policy and they want to have an input into future decisionmaking.[82] FHWA is trying to accommodate these interests and input, but it does not want to fund State enforcement activities with MCSAP funds that are inconsistent or incompatible with FHWA's education and enforcement policies.

On July 1, 1988, FHWA took what it considered to be a major step toward promoting compatibility of both the Federal education and enforcement program and MCSAP-sponsored activities. This policy document stated that as of the start of FY 1989, MCSAP funds could no longer be used for reimbursement of audits conducted by a State unless an SR was first conducted by either FHWA or by a State. FHWA also strongly encouraged participating MCSAP States to adopt the FHWA SR/CR review procedure as a model.

Because of rather forceful and numerous objections from some six States that were conducting audits under MCSAP prior to this memorandum, FHWA has decided to postpone implementation of this memorandum for these six States. FHWA is meeting with these States to discuss what flexibility is possible to accommodate the interests and needs of these States.

There are several problem areas that need to be worked out among FHWA personnel and various State officials. Some States officials are concerned about uniformity issues involving safety reviews and follow-up audits. For example, some State officials want

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[82] During 1988, the National Motor Carrier Advisory Committee, an advisory group to the FHWA, has recommended that States follow a uniform method of auditing comparable to FHWA standards.

increased flexibility to do more than is specified in the SR process. Some officials want to conduct more flexible auditing programs than just the SR/CR process. Some States want to use different approaches in selecting carriers to visit, they don't want to be restricted to FHWA's safety ratings. FHWA claims that it is trying to be flexible enough to allow States to continue their existing MCSAP-funded programs to the maximum extent possible, but within the intent or design of FHWA's education and enforcement policies.[83]

Since the creation of MCSAP some six years ago, a national uniform roadside inspection policy and practice has gradually evolved. The challenge that FHWA and participating MCSAP States now face is to develop a uniform and workable nationwide education and enforcement program.

Assuming that all the issues associated with FHWA's policy statement are resolved, this new initiative will make MCSAP-supported education and enforcement activities more compatible with Federal policies. Without this compatibility, State enforcement officials could use MCSAP funds to conduct audits which resulted in enforcement actions and the assessment of penalties against motor carriers that had not been previously visited before by either FHWA or State enforcement officers.[84] The levying of such fines basically conflicts with the educational orientation of the SR process.

Could MCSAP Finance More SRs and CRs and Audits of Motor Carriers?

FHWA views increased State involvement in motor carrier safety as both a desirable goal and as a natural progression. According to FHWA, the first stage in the process is to encourage a State to implement an effective roadside inspection program. MCSAP has accomplished this objective. The next stage, according to FHWA, is to encourage States to assist the FHWA in conducting safety reviews. A roadside inspector can easily be trained in several weeks to conduct safety reviews and provide education and technical assistance. As of March 1989, 28 States were performing SRs. Another seven may begin this fiscal year. Most of these claim they lack funding to conduct SRs; a few need additional training. The last stage, the most difficult, is the conduct of indepth compliance reviews.[85]

State safety investigators or inspectors, provided they were properly trained, could become more involved in supplementing all aspects of FHWA's education and enforcement efforts. For example, MCSAP-funded investigators could conduct an increased number of safety and compliance reviews on interstate motor carriers domiciled in their particular States. States could also conduct similar activities on intrastate carriers. (The balance of interstate versus intrastate motor carriers needs to be addressed, because the compliance of every segment of the motor carrier industry must be checked.) Furthermore, there are many opportunities for State investigators to supply needed evidence that could be used in enforce-

[83] Personal communication with FHWA staff, 1988.
[84] Ibid.
[85] Ibid.

ment actions prosecuted by either State attorneys or FHWA officials.

FHWA is beginning to realize the opportunities to promote with MCSAP funds State motor carrier safety programs that are both consistent and compatible with the Federal motor carrier safety program. However, the availability of MCSAP funds remains a major limitation.

If FHWA is going to encourage participating MCSAP States to conduct more SRs, CRs, and other forms of indepth audits, there are two choices. The first choice—substantially reduced expenditures for roadside inspections—is unlikely to happen. FHWA and many participating States would generally argue that a major reduction in the number of roadside inspections would be a bad mistake and would reduce public safety. It is widely recognized that an effective enforcement presence at the roadside is needed. Without adversely affecting MCSAP's roadside inspection program, it is unlikely that funds to pay for a large increase in SR and CR activities could come from existing MCSAP funds. In order to conduct the number of roadside inspections expected by FHWA, many States already have thinly stretched their MCSAP funds.

Thus, it appears that the only real choice is to increase MCSAP funds beyond the amounts currently authorized if more compliance and safety reviews are desired or mandated. Many States on their own initiative are unlikely to conduct many additional safety reviews without increased Federal assistance.

OPTIONS INTENDED TO IMPROVE THE EFFECTIVENESS AND EFFICIENCY OF FHWA'S EDUCATION AND ENFORCEMENT PROGRAM

Presented below is brief explanation of 16 options that are intended to increase the effectiveness or efficiency of the FHWA's education and enforcement program. Some of these options pertain directly to FHWA personnel; others pertain to new authorities that this Agency could use to better promote motor carrier safety; and finally, some options are requirements that Congress might impose to strengthen or improve FHWA's current activities.

As indicated below, each of these options has its own unique set of advantages and disadvantages that need to be analyzed in terms of its likely impact on safety, and the costs to the Federal budget or to the Highway Trust Fund. The estimated costs of implementing each of these options is presented below in table 18. In order to implement some of these options, congressional action would be needed; others could be instituted by the executive branch on its own.

Resource Allocations and Personnel Matters

1. provide for 150 additional FHWA safety specialists to work in FHWA's regions;
2. increase MCSAP's annual funding level by $3 million to $5 million to encourage State enforcement officers to expand their safety and compliance review efforts (SR/CR) in order to supplement FHWA activities;
3. increase the grade level of senior, qualified, non-supervisory FHWA safety specialists working in the field to at least the GS-12 level and provide for high cost-of-living area differentials for some FHWA regional employees;

New Authorities or Requirements

4. specify minimum penalty amounts for violations of the Federal motor carrier safety and the hazardous materials transportation regulations and increase the maximum penalty amounts now allowed for violations of the Federal motor carrier safety regulations;
5. require FHWA to either take an enforcement action or issue a citation with associated civil penalties for any documentable serious violation of the Federal motor carrier safety or hazardous materials transportation regulations;
6. prohibit the transportation of certain hazardous materials by motor carriers that have an unsatisfactory safety rating;
7. require periodic publication of unsatisfactory safety ratings or downgrading of safety ratings of motor carriers, but only after due process has been afforded the rated carrier;

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8. require FHWA to assign a quantitative or a more informative safety rating to a motor carrier;

9. require FHWA to focus its safety rating program on specified carriers;

10. require motor carrier's identification on all motor carrier vehicles;

11. require all motor carriers subject to the jurisdiction of DOT to register with the DOT;

12. require the General Accounting Office to submit a report to Congress that would analyze the administrative and legal handling of enforcement cases undertaken by the FHWA;

13. direct FHWA to spend more of its time on enforcement than education activities;

14. require submittal of a biannual report to Congress on motor carrier safety and FHWA's implementation of various safety laws;

15. create a separate Motor Carrier Safety Administration in the DOT removing truck and bus safety enforcement responsibilities from the FHWA; and

EXISTING AUTHORITIES

16. require FHWA to make use of its existing authority to shut down the operation of motor carriers that are judged to be imminently hazardous.

TABLE 18.—*Estimated costs of options intended to improve the FHWA program*

Policy options	Rough estimate of annual costs to FHWA
1. Increase staff of FHWA by 150 safety specialists.	$8 million annually.
2. Increase appropriations to MCSAP to increase the number of safety and compliance reviews conducted by State enforcement officers.	$3 million to $5 million annually.
3. Increase grade level of FHWA Safety Specialists.	$73,000 annually for first year, later years would cost more.
Provide high cost-of-living differential for some FHWA regional employees.	$75,000 annually.
4. Establish minimum civil penalty levels and increase current maximum amount for violations of the Federal motor carrier safety regulations.	None, additional funds would be generated for Federal treasury.
5. Require FHWA to bring an enforcement action or issue a citation with a civil penalty for every serious violation of the FMCSR.	None, funds would be generated to Federal treasury.
6. Prohibit carriers with an unsatisfactory rating from transporting certain hazardous materials.	Minimal one-time regulatory cost.
7. Require FHWA to publish periodically the names of motor carriers receiving an unsatisfactory rating.	$2000 annually.

Policy options	Rough estimate of annual costs to FHWA
8. Require FHWA to assign a quantitative or more informative safety rating to motor carriers.	Cost depends on type of information released; numeric system may be slightly more expensive than simply releasing a list of those parts of the regulations on which a motor carrier had achieved a less than satisfactory level of compliance as determined by FHWA.
9. Require FHWA to conduct a focused safety review program.	None.
10. Improve the identification of motor carriers and their vehicles.	Minimal one-time regulatory cost.
11. Require annual registration of the motor carrier industry.	$100,000 first year and $50,000 annually thereafter.
12. Require GAO to submit a report to Congress on FHWA's handling of enforcement cases.	$150,000.
13. Direct FHWA to spend more time on enforcement than education.	None, additional funds would be generated to Federal treasury from penalties collected.
14. Require submittal of bi-annual report on FHWA activities to Congress.	$100,000 every two years.
15. Create a separate Motor Carrier Safety Administration.	A minimum of $2.8 million annually,[1] FHWA estimates higher costs would be encountered.
16. Make use of existing authorities to shut down imminently hazardous motor carriers.	Minimal to none.

[1] $14 million spread over the next five years, (CBO estimate in Senate Report 100-264).

Provide for an Additional 150 New FHWA Safety Specialists to Work in FHWA's Regions

Throughout this report, it has been stressed that FHWA does not have the resources to implement effectively all of the safety responsibilities that have been assigned to it by Congress and the Secretary of Transportation.

In order to address this situation, the National Transportation Safety Board has recommended that the Department of Transportation:

> Increase the number of Office of Motor Carrier Safety (OMCS) agents to enable OMCS to perform an adequate safety audit of all interstate motor carriers and to perform timely followup compliance reviews of those carriers that receive a less than satisfactory rating.[86]

Likewise, in its FY 1990 budget, FHWA requested the authority to hire up to 150 additional inspectors. These new positions would be allocated as follows: 75 full-time equivalent positions for new inspectors to be filled during FY 1990 and another 75 for FY 1991.

Because the FHWA staff is so small relative to the size of the regulated industry, there are many opportunities to promote motor carrier safety that cannot be pursued and problems that cannot be effectively addressed. Some illustrative problems or opportunities are presented below.

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[86] National Transportation Safety Board. Highway Accident Report, NTSB/HAR-87/04. p. 54.

Those arguing for an increase in FHWA's funds to increase the number of inspectors could cite these workload considerations:

a. There are at least some 40,000 motor carriers that have or will soon receive a conditional safety rating. FHWA would like to conduct a follow-up compliance review on all of these motor carriers. Given current resources and program priorities, it would take roughly 10 years before each of these motor carriers could be visited by FHWA personnel. The availability of additional staff would decrease the lead time before these carriers will be revisited by FHWA.

b. There are at least some 6,000 motor carriers that have or will soon receive an unsatisfactory safety rating from FHWA. Given its current workload and resources, FHWA will probably be unable to conduct a follow-up compliance review on all of these carriers before the next one and a half years.

c. There are some 25,000 shippers of hazardous materials under its the jurisdiction that have not been visited by FHWA in recent years. Shippers play an important role in promoting hazardous materials transportation safety.

d. Of the 1200 motor carriers with unsatisfactory safety ratings that are transporting hazardous materials, many have not been audited by FHWA for several years; some have not been audited since 1980.

e. Roughly 120,000 motor carriers have not yet received a safety rating (SR) from the FHWA. If FHWA is to reduce substantially the number of carriers on its SR list, then additional staff must be assigned to this task.

f. FHWA's program would be facilitated by an increase in the number of trained staff capable of enforcing the Federal hazardous materials transportation regulations.

g. FHWA faces new challenges in order to enforce effectively the commercial drivers licensing requirements of the Commercial Motor Vehicle Safety Act of 1986. Increased staff will be needed to enforce this Act if other FHWA activities are not to suffer.

h. Increasingly, FHWA is becoming involved in the drug enforcement components of motor carrier safety. There are several opportunities to increase FHWA's efforts in this important national program.

i. If an increasing number of State enforcement officers are going to conduct safety and compliance reviews, then FHWA will need to assist in the training of these officers.

j. If FHWA does not get authority to increase substantially its work force, it is likely that this Agency would need to reevaluate its entire SR program and perhaps abandon its goal of contacting all interstate or foreign commerce carriers.

k. Manpower is needed to monitor the safety performance of carriers with a satisfactory safety rating and to perform follow-up CRs on those satisfactory-rated carriers that report too many preventable accidents or fail too many MCSAP inspections.

FHWA estimates that approximately $8 million of additional Federal funds would be needed to provide the salaries and administrative support for an additional 150 safety specialists.

Those arguing against providing FHWA with additional manpower could point out that FHWA should first make more effective use of its existing resources. They could assert that this Agency needs to adopt a much more vigorous enforcement posture before additional investigators are funded. They might also maintain that the costs of increasing FHWA's workforce would add to the Federal budget deficit.

In reply, supporters of FHWA could argue that:

a. These additional FHWA safety specialists will pursue enforcement actions that would result in monies collected, thus indirectly off-setting some of the costs of their activities.

b. If FHWA's enforcement and educational activities result in a reduced number of accidents then, the beneficial savings to society in terms of decreased hospital costs and property damages as well as huge reductions in human suffering could far outweigh the additional costs of funding 150 additional FHWA safety specialists.

c. As previously indicated, the Federal transportation safety budget heavily favors the enforcement of rail and commercial airline safety regulations relative to commercial motor carrier safety regulations, especially when the number of deaths and injuries are considered. Additional funding to increase the number of FHWA safety specialists would help bring into line, on a proportional basis, the Federal monies allocated to the enforcement of truck and bus safety regulations.

In the past, the American Trucking Associations (ATA) has testified in favor of increasing the number of FHWA inspectors. ATA supports the addition of 150 more FHWA safety specialists.

Increase Appropriations for MCSAP to Encourage State Enforcement Officers to Expand Their SR/CR Efforts in Order to Supplement FHWA Activities

Even with an additional 150 safety specialists, FHWA will be unable to implement effectively all of the safety responsibilities that have been assigned to it. The workload is too extensive; FHWA cannot do it all. A realistic approach to addressing the motor carrier safety enforcement problem might be to forge a stronger Federal/State partnership under the existing MCSAP framework.

As discussed in detail in the CRS report on MCSAP, this partnership has already demonstrated its success and general effectiveness during roadside inspections. There is much interest in expanding this program to encourage the States to increase the number of safety and compliance reviews they conduct.

If the Congress sees a need for a more vigorous and comprehensive motor carrier safety program, FHWA's educational and enforcement activities could be supplemented by increased and strengthened State SR/CR activities. Although some States are not yet interested in assisting FHWA on a voluntary basis in these efforts, many States might welcome this opportunity and would do more if additional financial assistance under MCSAP were provided.

The optimal future would be an improved MCSAP partnership between the Federal and State government so that each State would have a comprehensive State motor carrier safety program. Roadside inspections and principal place of business SRs/CRs complement each other. Various State programs could be assisted by technical guidance, exemplary enforcement actions and procedures, and model efforts implemented by the FHWA. Some of the State auditing programs are now more comprehensive and intensive than other State programs. The challenge would be to help all States reach at least a basic level of safety and compliance review activity. This transition, assuming the Congress is willing to support it, will probably take at least an additional five years for almost all of the States to achieve.

Given current funding levels, MCSAP cannot simultaneously support the inspection of over 1.2 million trucks and buses each year and help fund a much more vigorous State safety and compliance review effort. The key policy issue of concern is: Does Congress want MCSAP to provide additional assistance to FHWA in implementing its safety functions? If so, at what level?

If a more active State-conducted safety and compliance review program is desired, then either the funds available for MCSAP will have to be increase or the number of roadside inspections will need to decrease substantially. MCSAP, without any additional funds, is already stretched thinly and it is highly doubtful that most States will fund their own SR/CR program without financial assistance from the MCSAP.

Perhaps $3 million to $5 million each year could be added to the amount of contract authority that is authorized for MCSAP specifically to encourage increased State involvement in auditing-related or educational activities. With these funds, more States could conduct an increased number of safety and compliance reviews, thus reducing the workload on FHWA. These activities would not only improve the level of compliance with Federal safety regulations, but they could also improve compliance with State safety regulations. This was one of the original purposes behind the creation of MCSAP during the early 1980s.

Some might argue, however, that the Highway Trust Fund has been tapped enough to support MCSAP and that any expansion of this program should not be allowed.

Increase the Grade Level of Senior, Non-Supervisory, Qualified FHWA Safety Specialists Working in the Field to at Least the GS–12 Level and Provide for High Costs-of-Living Area Differentials for FHWA Employees

During the early 1980s, the Office of Personnel Management (OPM) downgraded the grade level of senior, non-supervisory Federal motor carrier safety investigators from a GS–12 position to a GS–11 position. Apparently, OPM directed that FHWA downgrade the job classification for a safety investigator in such a manner that did not allow non-supervisory employees to maintain a GS–12 rating and still continue working in the field as a full-time investi-

gator.[87] It should be noted that the journeyman level for a safety investigator working for the Federal Railroad Administration goes up to a GS–12. There is also a non-supervisory specialist position for FRA's safety investigators at the GS–13 level. In fact, 45 U.S.C. 443 provides that a fully experienced and qualified railroad safety inspector employed by DOT shall be classified no lower than GS–12 and that a railroad safety specialist shall be classified no lower than the GS–13 level. Non-supervisory safety inspectors working for the Federal Aviation Administration can advance frequently to the GS–12 level. Non-supervisory FAA inspectors can also reach the GS–13 and 14 levels.

There are several reasons why the Congress might want to increase the grade level of the qualified, nonsupervisory FHWA safety specialists. By far, the most important reasons would be to encourage experienced investigators to continue working for the FHWA and to stimulate junior-level investigators to increase their skills so that they would be eligible for the GS–12 position. In the past, some FHWA investigators have transferred to other parts of the DOT and to the National Transportation Safety Board partly because of the opportunity to advance beyond the GS–11 grade. The key point is that a high quality enforcement program needs to be underpinned by high quality, experienced safety specialists.

Some FHWA employees have argued that they believe the senior, non-supervisory specialists should be eligible for a GS–12 rating. For evidence, they point out that some of the enforcement cases that the senior-level FHWA safety specialists deals with are complex and difficult and require considerable knowledge. The current GS–11 safety specialists must also spend a considerable amount of their time training new specialists. Although this may not be a formal supervisory relationship, it still involves management expertise.

The additional costs to the Federal treasury of implementing this option for the first year are roughly estimated at $73,000 per year. As more of the junior level specialist advance, out-year costs of this option would increase. Some might ask whether this additional expenditure is the best way to use scarce Federal transportation safety dollars. On the other hand, it can be argued that the benefits to morale and the potential savings of having not to train so many new employees because of increased length of service by current FHWA personnel would outweigh this relatively small cost.

Another personnel problem that appears to have adversely affected FHWA's motor carrier safety program is the high cost of living in certain metropolitan areas. FHWA has had difficulty assigning and maintaining GS–7, 9 and 11 personnel in these areas. This is a Government-wide problem. Recently the Office of Personnel Management (OPM) decided to provide FAA air controllers with a special high-cost of living pay increase in specified areas. No such differential exists for FHWA personnel. The disadvantage of providing this differential to FHWA regional staff, of course, would be the approximate cost of $75,000 per year.[88]

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[87] Personal communication with FHWA staff, 1988.
[88] Estimated by FHWA.

Specify Minimum Penalty Amounts for Violations of the Federal Motor Carrier Safety and the Hazardous Materials Transportation Regulations and Increase the Maximum Penalty Amounts Now Allowed for Violations of the Federal Motor Carrier Safety Regulations

The Motor Carrier Safety Act of 1984 set maximum penalty amounts that could be imposed for civil violations of the Federal motor carrier safety regulations (FMCSR). Likewise, the Hazardous Materials Transportation Act of 1975 set maximum penalty amounts for civil violations of the Federal hazardous materials transportation regulations. Neither of these statutes sets minimum penalty levels.[89]

As previously discussed, under both of these statutes, FHWA must consider several factors when setting final penalty amounts in enforcement cases. Because these factors must be weighed, motor carriers are frequently able to provide information to FHWA that results in reduced penalty amounts from that originally requested by FHWA. Sometimes, the final penalty amounts imposed on motor carriers for violations of the FMCSR are so small that they do not have their desired effect. In some cases, FHWA has to bring enforcement actions against the same company on several occasions until compliance is achieved. Penalty assessments are sometimes considered just an additional cost of doing business.

It is difficult for FHWA to impose substantially high penalty amounts and follow all of the criteria set forth in the Motor Carrier Safety Act of 1984. This difficulty would be reduced by imposing minimum penalty amounts and by increasing the current maximum amounts allowed. Consequently, FHWA's ability to promote compliance would be enhanced.

If Congress decides to incorporate minimum civil penalty assessments into either the Motor Carrier Safety Act of 1984 or the Hazardous Materials Transportation Act of 1975 (HMTA), it would be important to specify that these minimum penalty amounts shall be assessed even after consideration of all mitigating factors that must be considered as specified in the existing penalty provisions of these Acts.

The imposition of minimum penalty amounts would certainly reduce some of the administrative flexibility that FHWA settlement officers now enjoy; however, it would make the Federal motor carrier and hazardous materials transportation laws similar to the Federal Railroad Safety Act of 1970 which contains a minimum penalty provision. Minimum penalty amounts also would send a clear signal to industry that Congress considers these civil penalty provisions to be serious matters, significantly more serious than traffic violations.

There are two other benefits that could result from the imposition of minimum civil penalty amounts: 1) increased penalty uniformity among different FHWA regions; and 2) decreased subjectivity in the enforcement process. In structuring minimum penalty levels, it would be important to consider the type of violation. As

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[89] Part II of The Interstate Commerce Act enacted in 1935 set forth a minimum penalty amount for criminal violations of specified motor carrier safety regulations.

presented in table 19, perhaps four different minimum penalty amounts could be considered each corresponding to the four major types of violations specified in the Motor Carrier Safety Act of 1984. As judged appropriate, specific employer and employee minimum penalty assessment levels might also be evaluated, especially for recordkeeping violations.

TABLE 19.—SOME OPTIONS FOR NEW MINIMUM AND MAXIMUM PENALTY AMOUNTS FOR VIOLATIONS OF THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS

Federal motor carrier safety civil penalty violations	Current penalty maximum	Possible new minimum	Possible new maximum
Recordkeeping violations	$500 for each offense per day Capped at $2,500 for all offenses relating to any single violation.	$300 for each offense per day for employers $200 for each offense per day for employees	$1,000 for each offense per day for employers. $500 for each offense per day for employees. Capped at $10,000 for all offenses relating to any single violation for employers. Capped at $5,000 for all offenses relating to any single violation for employees.
Serious pattern of safety violations	$1,000 for each violation within a serious pattern capped at $10,000 for each such pattern.	$500 for each violation within a serious pattern	$2,000 for each violation within a serious pattern capped at $20,000 for each such pattern or simply no cap.
Substantial health or safety violations	$10,000 for each substantial health or safety violation.	$1,000 for each violation	No change.
Employee nonrecordkeeping violations	$1,000 per count	$500 per count	$2,000 per count.

The major disadvantage with setting a minimum penalty amount would be the potential impact on some small "Mom and Pop" trucking companies, or perhaps even large carriers if penalties add up. However, it can be argued that if a company cannot operate safely and in compliance with Federal safety regulations, it should not be allowed to continue to operate. Several substantial penalty assessments might convince a marginal operator to go out of business.

Even with minimum penalty amounts specified, the FHWA would still have three types of flexibility. It could decide not to bring an enforcement action for each violation documented. It could reduce the number of counts documented for specific types of violations. And finally, it could decide to impose penalty actions in between the minimum and maximum amounts specified above.

Increasing the maximum penalty amounts for violations of the Federal motor carrier safety regulations would put more "teeth" into these regulations. Furthermore, increasing the maximum amounts would also likely result in FHWA increasing each of its various recommended penalty guidelines shown in table 8. Another rationale for increasing one of the maximum penalty amounts specified in the Motor Carrier Safety Act of 1984 is that the current $10,000 cap on any serious pattern of safety violations has adversely affected the implementation of a vigorous enforcement program.[90] Because of this cap, it is sometimes more profitable for a large company to pay a $10,000 penalty once or twice a year than to stop its drivers from violating the hours-of-service driving requirements. For example, FHWA has brought two enforcement cases against the same company for repeated alleged violations related to hour-of-service regulations. FHWA brought enforcement cases against this company in May 1986 and again in January 1988 for requiring or permitting drivers to drive more than 10 hours and/or driving after allegedly having been on duty 15 hours. According to FHWA, the company found it less expensive to pay the penalties than to correct immediately their alleged safety violations relating to the number of hours that their employees drive. The company in question was willing to obey all of the Federal safety regulations, except those pertaining to how many hours their employees could legally drive, according to FHWA. Since the closing of its last FHWA enforcement action, the company has reportedly taken the necessary steps to come into satisfactory compliance with FHWA's safety regulations.

Some carriers, and their employers would object to any changes in the civil penalty provisions of the Motor Carrier Safety Act of 1984 because of the potential financial costs that might be encountered.

It can also be argued that no changes in the existing civil penalty provisions should be considered until recent changes in FHWA's program can be evaluated. This could take years.

The American Trucking Associations (ATA) currently opposes either instituting minimum civil penalty provisions or raising the existing maximums specified in the Motor Carrier Safety Act of

[90] Personal communication with FHWA staff and reviews of various FHWA enforcement cases.

1984. ATA maintains that these penalty provisions are rather new and that they have not yet conducted an evaluation of their effectiveness.[91] Furthermore, ATA adds that given the range in the size and financial condition of motor carriers, it would be impossible for Congress or FHWA to set a minimum for all motor carriers. ATA argues that increased imposition of current penalty authorities would be just as effective and more practical than increasing current maximum amounts and establishing a minimum level.

On the other hand, it could be argued that the minimum penalty amounts specified in table 19, combined with FHWA's judgement on the number of counts to be prosecuted, could provide the foundation for a workable system.

Require FHWA to Bring an Enforcement Action or Issue a Citation With a Civil Penalty for Serious Violations of the FMCSR That can be Documented

A. MANDATORY ENFORCEMENT ACTIONS

FHWA safety specialists have conducted thousands of safety or compliance reviews that have revealed serious alleged violations of the Federal motor carriers safety regulations, but no enforcement action was taken against these carriers.

If Congress chose to address this situation, one option would be to require FHWA safety officers to initiate an enforcement action whenever documentable serious safety violations are discovered during their reviews. Such violations might include serious patterns of noncompliance, e.g., requiring drivers to exceed hours of service requirements; substantial health or safety violations, e.g., requiring a driver to use a truck with defective brakes; or falsification of medical certificates or log books, e.g., falsification intended to conceal a violation of an important safety regulation. Such an enforcement mandate would send a strong signal to industry that noncompliance would result in civil penalties and the noncompliance would no longer be excused because of lack of knowledge or prior contact with FHWA. This mandate would increase the time FHWA spends on its enforcement activities and would eliminate much of FHWA's first visit freebie practice.

This mandate would not be triggered each time FHWA visits a motor carrier, but could be reserved for the most serious of offenses, willful acts or blatant disregard for safety or compliance with the safety regulations. Word about such a mandate would spread rapidly throughout industry. It is likely that such a mandate would increase the current poor level of voluntary compliance exhibited by many carriers, because industry would know that civil penalties were extremely likely for serious offenses.

If Congress imposed such an enforcement mandate, FHWA could still pursue most, if not all, of its ongoing education and technical assistance efforts. For example, FHWA could still send an advisory letter to a motor carrier prior to its first visit informing this company of many of its safety responsibilities. FHWA could still point out corrective actions that needed to be taken to comply with its

[91] Personal communication with ATA employees, 1989.

safety regulations. In addition, FHWA could still provide guidance to motor carriers in its field offices. Thus, because of this flexibility, FHWA would still be allowed to pursue many educational functions prior to pursuing any enforcement action.

There are several potential drawbacks to such a mandate. Enforcement actions are expensive and time consuming. In a given period of time, FHWA specialists could provide educational assistance to more carriers than it would reach with enforcement actions. FHWA notes that some motor carriers, especially smaller operations, are not even aware of the safety regulations and that they need FHWA's educational assistance to come into compliance. Furthermore, FHWA employees maintain that some carriers would be less willing to work with them to improve compliance if this Agency had such a mandate. They argue that such an enforcement mandate would not create an atmosphere conducive to cooperation. In addition, FHWA wants to retain its flexibility to determine when enforcement sanctions are used. FHWA also wants to continue its policy of relying primarily first on educational efforts to reinforce voluntary compliance and wants to use enforcement sanctions primarily only when other methods fail to achieve a satisfactory level of compliance.[92]

Although these arguments are important, there is an major counterargument that is repeatedly made throughout this report. Namely, FHWA's policy of promoting and relying primarily upon voluntary compliance and emphasizing educational remedies is not working effectively. As previously stated, this conclusion is supported by the following:

1. Roughly 52 percent of the carriers reviewed by FHWA are judged by FHWA to have achieved a less than satisfactory safety fitness rating;
2. The number of people killed and injured in accidents involving commercial motor vehicles continues to be staggering and continues to increase (see tables 1 and 2);
3. The number of vehicles taken out-of-service for critical safety defects—roughly 40 percent of those inspected—is high; and
4. In many cases, FHWA finds noncompliance even after repeat visits to motor carriers.

B. CITATION AUTHORITY

There are some situations, usually involving less serious safety violations, in which a formal enforcement case may not be justified or cost-effective.[93] In these cases, FHWA safety specialists or their managers must decide whether to collect evidence for a formal case or merely give the motor carrier a warning. There is no middle ground.

This is quite unlike the policies/law that governs the operation of inspectors working for the Occupational Safety and Health Ad-

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[92] Personal communication with FHWA employees, 1989.

[93] Despite FHWA's efforts to streamline the process, FHWA's enforcement process is costly, time consuming, and sometimes burdensome on its safety specialists and their managers. FHWA tries to document with great care the evidence used to substantiate its enforcement cases. This is generic to all of DOT's transportation safety enforcement efforts.

ministration of the Department of Labor. These inspectors are required, except for certain circumstances, to issue a citation whenever an OSHA violation is discovered. (Section 9 of the Occupational Safety and Health Act of 1970.) A civil penalty must always be imposed when the violation is considered to be serious.

Under current law or FHWA policy, FHWA safety specialists are not specifically authorized to issue citations that are not issued pursuant to, or without consideration of, the civil penalty provisions of the Motor Carrier Safety Act of 1984. If the FHWA safety specialist judges that an enforcement action is necessary, he must now under current FHWA policy pursue a formal process that can require several days of data collection, and/or extensive interviews. As many as 30 hours or more can be required to write up a case. Under State law, however, State enforcement officers supported with Federal MCSAP dollars can issue citations, some of which carry heavy financial penalties, on the spot.

One option that might be considered to improve the flexibility and efficiency of the enforcement process would be to allow FHWA safety specialists to issue citations with relatively small—$100 to $500—civil penalties attached to them. A streamlined civil penalty procedure to accompany these citations might be devised that is separate from and less cumbersome than FHWA's existing civil penalty procedures. There are several ways in which this citation authority might be used, for example:

1. FHWA could be required to issue a citation (or to bring an enforcement action), whenever a violation of the FMCSR can be documented. [One citation could cover many violations]; or
2. FHWA could be required to issue a citation with a civil penalty, (or bring a formal enforcement case), against a motor carrier driver or shipper, whenever a serious safety violation can be documented.

The possible advantages of adding this citation authority to FHWA's portfolio of enforcement tools would be:

a. Instead of just informing the audited motor carrier or shipper that a number of violations were found but no enforcement action would be taken, FHWA safety specialists would be able to issue a citation with a small fine, thus increasing attention to FHWA's efforts to promote compliance. The citation with a small fine could serve as a warning, a "shot over the bow";

b. Especially against small carriers, it would be more appropriate in some cases to issue a citation in the $100 to $500 range than to bring a $2000-$4000 formal enforcement case;

c. The authority to issue a citation would provide a higher degree of certainty that documentable violations would result in civil penalty forfeiture; and

d. A citation process less cumbersome than FHWA's enforcement process would allow FHWA specialists to more effectively promote the future compliance of many more carriers, drivers, and shippers each year.

New legislative authority would need to be granted to the Secretary of Transportation to issue these citations not subject to the civil penalty procedures and provisions of the Motor Carrier Safety Act of 1984. There would need to be a due process or appeal proce-

dure that would allow a motor carrier, shipper, or driver the right to argue against such a citation or ticket.

Possible disadvantages of this option include:

a. There might be a tendency by some FHWA safety investigators to rely more on this citation mechanism than to take the effort needed to bring an enforcement action. This process would need to be carefully monitored by the FHWA;

b. Enforcement cases would have more of a financial impact on a regulated entity; the impact of a citation would need to be assessed further; and

c. A citation authority with an associated civil penalty could place a great deal of authority in the hands of Federal safety specialists with grades of GS-11 or under. Of course, it might be possible to allow only senior investigators the authority to issue citations. This increased authority might be coupled with the option of increasing the grade level of the qualified, senior level FHWA investigator to the GS-12 level, see option dealing with this topic.

The American Trucking Associations opposes providing FHWA inspectors with the authority to issue citations. They argue that this new authority could be wrongly used to harass motor carriers.[94]

This argument could be extended to suggest that FHWA should not have any civil penalty enforcement authority.

Furthermore, ATA does not believe that the individual FHWA specialist has the necessary expertise to determine all of the circumstances that would justify imposition of a penalty and the amount of the penalty.[95] On the other hand, one could argue that State or local governments have provided citation authority to thousands of truck inspectors and generally this process is working at the roadside. It also can be argued that there is essentially no evidence to support the ATA assertion that FHWA staff would not have the expertise to initiate a citation. FHWA's staff are currently handling more difficult cases now. A citation procedure could easily be taught in one or two days of training.

Prohibit the Transportation of Certain Hazardous Materials by Motor Carriers With an Unsatisfactory Safety Rating[96]

FHWA has assigned an unsatisfactory safety rating to more than 1200 motor carriers that are transporting hazardous materials, such as flammable gases, explosives, and various toxic materials. FHWA has never prohibited any of these carriers from operating. The issue that Congress might address is: Should any hazardous materials carrier be allowed to operate in interstate commerce with an unsatisfactory safety rating?

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[94] Personal communication with ATA, 1989.

[95] Ibid.

[96] An expansion of this option would be to prohibit any carrier of passengers (buses) subject to FHWA's jurisdiction that has an unsatisfactory safety rating from operating until its rating is improved. Another expansion of this option would be to prohibit any carrier with an unsatisfactory safety rating from engaging in interstate or foreign commerce regardless of whether or not it is transporting hazardous materials or passengers. The same pro and con arguments discussed below can generally be applied to these expanded options.

The prohibition against transporting hazardous materials as long as a company has an unsatisfactory rating would be a rather stringent measure. If this provision were implemented, any hazardous materials (HM) carrier with an unsatisfactory rating would need to receive at least a conditional rating from the FHWA to be allowed to transport these commodities. Those supporting such a prohibition might argue that the catastrophic potential of many hazardous materials demands that these carriers should demonstrate a certain minimal level of safety, i.e., a conditional safety rating.

The severity of this action also suggests the need for FHWA to be cautious before assigning an unsatisfactory safety rating to a HM carrier, thus prohibiting this operation from transporting hazardous materials. Before any HM carrier receives an unsatisfactory rating, many in industry would argue that it would be important to allow an opportunity to appeal such a decision and to present counter arguments supported with appropriate documentation.

In addition, the FHWA could be required to revisit any motor carrier that is prohibited from transporting these materials within a reasonable period, e.g., every six to twelve months, to allow the motor carrier to demonstrate whether its level of compliance had improved to at least the conditional level. The very threat that the FHWA would not be allowed to or could not "re-rate" an unsatisfactory HM motor carrier more often than every six to twelve months would further encourage most of these carriers to maintain satisfactory compliance practices.

Because different types of hazardous materials are potentially more dangerous than others, it might be worthwhile to define the types and quantities of shipments that would be prohibited. Alternatively, a carrier assigned an unsatisfactory rating might be prohibited from transporting all hazardous materials.

The current FHWA safety rating system was not designed to be used as a means of determining whether a motor carrier should be prohibited from transporting hazardous materials. Some minor adjustments or modifications in the current rating process would probably be necessary if this option were implemented into law or FHWA's regulations.

There is some precedent for this option. In a December 7, 1988 statement in the *Federal Register,* the ICC noted that it would reject all applications for operating authority of motor carriers transporting hazardous materials with less than a satisfactory safety rating from DOT.

The FHWA proposed in its safety fitness rulemaking that a carrier could not operate with an "unsatisfactory" rating. The proposal was rejected in the final rule because the current authority only allows the FHWA to close a motor carrier under the provisions of an imminently hazardous condition.

ATA maintains that the transportation of hazardous materials by motor carriers with an unsatisfactory safety rating should not be prohibited unless the motor carrier's operations are judged to be "imminently hazardous" as defined in the Motor Carrier Safety Act of 1984. The issue of "imminently hazardous" is discussed later in another option presented in this report.

REQUIRE FHWA TO PUBLISH PERIODICALLY (OR OTHERSISE MAKE READILY AVAILABLE) THE NAMES OF MOTOR CARRIERS WHO RECEIVE AN UNSATISFACTORY SAFETY RATING

FHWA issues safety ratings on approximately 25,000 motor carriers each year. Anyone can write or call FHWA and obtain the safety rating of any motor carrier. This information is important to many shippers because they do not want their products, especially hazardous materials, to be transported by motor carriers that have received an unsatisfactory rating. In addition, a good safety rating is important to many carriers because they want to maintain a good public image.

FHWA does not publicize the safety ratings of carriers rated unsatisfactory or downgradings in the safety ratings of motor carriers. FHWA also does not release information on which parts of the regulations they judged a motor carrier to have achieved a less than satisfactory level of compliance. FHWA might be able to increase the degree of voluntary compliance with its safety regulations if these ratings were more widely publicized or if more information was released regarding the basis for the safety rating of an individual carrier. For example, FHWA could periodically publish a booklet containing the names of the approximate 5200 motor carriers that have received an unsatisfactory safety rating from FHWA. This list could be updated as required. Likewise, FHWA could publish a second list of names of motor carriers that previously had a satisfactory safety rating that had been recently downgraded to either a conditional or an unsatisfactory rating. Alternatively, FHWA could consider publishing a listing of motor carriers that had received a satisfactory safety rating. These publications would undoubtedly receive much attention.

By widely publicizing safety ratings and/or related information, FHWA could use the forces of the marketplace to encourage the use of carriers that have received a satisfactory safety rating over those carriers that have received conditional or unsatisfactory rating. The more publicity FHWA receives regarding its safety ratings, the more meaningful these ratings will become. It is well known that "bad news travels fast".

The National Transportation Safety Board has also discussed the importance of "spreading the word" about unsafe motor carriers.

> In addition, the Safety Board believes that if the States are to participate effectively in the OMCS enforcement process, they should know about unsafe motor carriers who operate within their borders. Appropriate agencies, such as State motor carrier regulatory and enforcement agencies and State consumer information agencies involved in the oversight of commercial buses or the dissemination of information to the public, should have access to the safety rating data compiled by OMCS. These data will enable the law enforcement and regulatory agencies to target extra surveillance and enforcement efforts on known habitual offenders. This will also permit State consumer agencies to provide information about unsafe carri-

ers to those citizens within their states who attempt to obtain such information.[97]

The widespread publication of unsatisfactory safety ratings would not be welcomed by many of the affected carriers. An unsatisfactory safety rating could have a profound impact on the ability of some types of motor carriers to obtain transportation contracts. Accordingly, it might be appropriate for any motor carrier receiving an unsatisfactory safety rating to be given an opportunity to appeal such a decision. Furthermore, establishing a mechanism to ensure due process before publication of an unsatisfactory safety rating would decrease industry opposition to this option. Under its existing safety rating process, a motor carrier now has the right to appeal its safety rating.

Demands by motor carriers to have their safety ratings upgraded or reviewed would certainly increase the workload that FHWA already faces. Additional staff would probably be needed to reaudit motor carriers demanding a review of their safety rating; however, many of the carriers that would probably demand a review of their safety ratings would already be in FHWA's SCE program and would be visited by the FHWA anyway. FHWA is already receiving demands from motor carriers that want their safety ratings reviewed and updated.

The benefits to safety that might be realized because of the economic pressures of the marketplace being brought to bear would probably outweigh substantially any additional administrative costs imposed on FHWA.

If this option became FHWA policy, it would be important to specify exactly when the safety ratings were determined and to point out the limitations of the process. Frequent publication of updated safety ratings would be useful.

Require FHWA to Assign a Quantitative Safety Rating or a More Informative Rating to Motor Carriers

The current safety rating process only provides to the public (including shippers and insurance companies) three broad categories of ratings: satisfactory, unsatisfactory, and conditional. The current system which lumps motor carriers into one of three broad categories is not very descriptive of the degree to which a motor carrier has complied with the safety regulations or its safety fitness. This is especially true for the 44 percent of carriers that are rated conditional. Are these conditional carriers on the borderline of being rated unsatisfactory or satisfactory?

FHWA could design a much more useful rating process by releasing a quantitative determination of the safety fitness of a motor carrier. A more informative, quantitative system, perhaps one based on 100 points, with zero being the worst rating and 100 the best, would be more useful to thousands of motor carriers and shippers, to the insurance industry, and perhaps to FHWA in setting its priorities on which carriers should be subject to a compliance review first. Alternatively, or in conjunction with a quantitative rating, FHWA could be required to release a list of the specific

[97] NTSB. Highway Accident Report, NTSB/HAR-87/04. p. 45.

parts of the Federal regulations on which a carrier was judged to have achieved a less than satisfactory level of compliance.

The cost of changing to a more informative safety rating determination would depend on the type and nature of information eventually released to the public. The least costly option would be to require FHWA to release a list of those parts of the regulations on which the carrier had not yet achieved a satisfactory level of compliance. This would require no fundamental change in the way in which FHWA now conducts its safety reviews and determines its safety ratings.

If Congress requires FHWA to determine a quantitative safety rating, FHWA would need to make some changes in its internal process now used to determine such ratings. The preciseness of the existing system would need to be improved. The costs of these improvements, however, are judged to be small relative to the costs of conducting safety reviews and to the potential benefits that could result if the users of the ratings had more informative insights into a carriers operations. The costs of conversion would be minimal because the current system is already based on a quantitative analysis—the weighting of an essentially binary system—that could be refined to provide a better and more informative assessment of safety fitness.

Some carriers might appeal their quantitative ratings, however, carriers already have the right of appeal in the existing rating process.

Some State enforcement officials are interested in the safety ratings of motor carriers domiciled in their States. Information on carriers rated on a quantitative scale might be of more value to these enforcement officers. This information could be useful in better targeting motor carriers for additional roadside inspections or for follow-up State audits.

Require FHWA to Focus its Safety Rating Program on Specified Carriers

Congress might consider requiring FHWA to focus its safety rating program on a specific set of carriers. This set could include carriers applying before the ICC, carriers of hazardous materials or passengers, carriers of vehicles or drivers performing poorly at roadside inspections, and carriers involved in specified accidents. Such a focused rating program would be more cost-effective, more safety-oriented, and less burdensome on FHWA than its current safety rating program.

Some might consider such a directive to be a form of micromanagement.

Improve the Identification of Motor Carriers' Vehicles

Current Federal regulations require most commercial motor carriers, e.g, private motor carriers and ICC-authorized motor carriers operating in interstate commerce to have definitive identification markings on both sides of their self-propelled power units.[98] This

[98] For exact requirements and scope of coverage see 49 CFR 390.21 and (ICC requirements) 49 CFR, Part 1058.

form of identification aids Federal and State inspectors in conducting enforcement actions and in monitoring the safety activities of specific motor carriers.

However, FHWA has determined that under existing Federal statute motor carriers of economic exempt commodities or operations are not required to have specific DOT or ICC identification markings. Many of these motor carriers have rather similar if not identical names on their vehicles. For example, there are many vehicles with the name "Jones Trucking" or "Rapid Transport" on them. Identification of these vehicles with a specific motor carrier responsible for complying with the safety regulations can pose a problem. Another problem is that ownership of the power unit may be in the name of an individual or an operator rather than in the name of a specific motor carrier responsible for compliance. There may be no documentation on board a vehicle which clearly identifies which motor carrier is responsible for that vehicle.

There are two populations of motor carriers that this identification problem presents concerns to FHWA: exempt for-hire motor carriers and ICC-authorized motor carriers. Apparently, FHWA originally thought that it did not have the legal authority to require identification numbers for exempt for-hire carriers.[99] FHWA attorneys have recently revisited this issue and now assert that FHWA does have this authority. Perhaps, additional congressional guidance might be useful to settle this uncertainty. Although ICC-authorized motor carriers are required by the ICC to have identification markings, FHWA is not authorized to enforce this ICC regulation and ICC's enforcement capabilities are rather limited. One possible legislative solution to both of these concerns would be to direct the FHWA to require all motor carriers subject to its jurisdiction to identify their vehicles, which would include unique markings on their vehicles. The motor carriers operating under the authority of the ICC could be allowed to use the identification requirements issued by the ICC; all other carriers could be required to use DOT identification.

The safety programs of both the FHWA and the States would be assisted if all commercial motor carriers were required to have a specific identification number on their vehicles. The costs to the motor carriers for these markings would be rather minimal and it would reduce the probability of mixups and strengthen enforcement.

Legislative Requirement That all Interstate, Foreign Commerce, and Federally Regulated Hazardous Materials Transportation Motor Carriers Register With the FHWA

Currently, there is no legislative requirement that all interstate motor carriers register with the FHWA. Because there is no such requirement, FHWA does not know and cannot identify all of the motor carriers subject to its regulations. Junior-level FHWA safety specialists, sometimes assisted by summer employees, have literally spent hundreds of hours trying to identify and locate carriers that need to be rated during future safety reviews. Not only does this

[99] Personal communication with FHWA staff, 1988.

cost money, but this wasted time takes away from time needed for other pressing safety needs, primarily enforcement.

A mandatory registration program could yield many potential benefits. An annual or bi-annual registration requirement could inform FHWA when a motor carrier changes the address of its principal place of business. Furthermore, as part of the registration process, the motor carrier could be required to sign a declaration of knowledge statement, an averment, that it had knowledge of, and was in compliance with, the Federal motor carrier safety and hazardous materials transportation regulations as a pre-condition of doing business in interstate or foreign commerce or federally regulated hazardous materials transportation. Such a statement might reduce the validity of statements from motor carriers who argue that "We didn't know what the regulations were." Or, "we don't know we were covered by your regulations." Such a self-certification process could be required on an annual basis in order for a motor carrier with a satisfactory rating to maintain such a rating. The costs of filling out and processing such a registration statement would be minimal for both the carrier and the FHWA.

There are certainly arguments against requiring motor carriers to register with the FHWA. It would be another recordkeeping requirement that FHWA would have to enforce with its small staff. Some might consider registration to be a burdensome requirement. There are other ways of finding out about motor carriers, such as by reviewing MCSAP inspection reports. Many new motor carriers have already been identified as a result of their compliance with a new FHWA regulation that they obtain their own unique DOT identification number and place this number on their power units. However, as stated above, this requirement does not now apply to all motor carriers. In addition, the validity of some self-certification statements would be subject to question.

The need for a comprehensive registration requirement has been reduced somewhat because of FHWA's new requirements for the filing of a Motor Carrier Identification Report.

> The rule requires all unrated motor carriers conducting operations in interstate or foreign commerce to file a one-time Motor Carrier Identification Report, Form MCS-150. A new motor carrier shall file a Form MCS-150 within 90 days after beginning operations. The purpose of this report is to identify previously unknown carriers, to update the motor carrier census, to require the carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations and, to assist FHWA in prioritizing motor carriers for safety review contacts.[100]

However, this report requirements applies only to unrated motor carriers subject to FHWA's jurisdiction.

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[100] U.S. Dept. of Transportation. FHWA. Safety Fitness Procedures, Final Rule, incorporated into 49 CFR 385.21.

Require the General Accounting Office to Submit to Congress a Report on FHWA's Motor Carrier Safety Enforcement Program and the Legal Procedures Used to Handle its Enforcement Cases

As previously discussed, FHWA conducts its enforcement actions in a detailed, somewhat cumbersome, and time consuming manner. In recent years, FHWA has implemented several changes designed to improve the efficiency of its handling of enforcement procedures. Despite these efforts, the enforcement process is still the slowest part of the entire FHWA program.

Congress might want to consider whether the General Accounting Office (GAO) should review how the handling of FHWA's enforcement cases might be improved. Such an audit might examine what changes, if any, are necessary to current law and FHWA's procedures to streamline the enforcement process. Such a study might consider whether a shorter, more simpler process could be instituted that would allow many more enforcement cases to be prepared.

The GAO study might also evaluate the effectiveness of FHWA's enforcement program in different regions analyze whether a consistent or uniform program is being conducted, and analyze FHWA's willingness to conduct a vigorous enforcement effort. GAO is not currently planning to conduct such an analysis.

Direct FHWA to Spend More of its Time on Enforcement Than Educational Activities

During FY 1988, FHWA's (nonmanagement) regional motor carrier safety staff devoted more than one-half of their time to educational activities designed to raise the level of compliance in the motor carrier industry. FHWA's emphasis on educational activities is likely to continue during FY 1989, but perhaps at a reduced level from that of the FY 1988 program. Given the high degree of noncompliance found in much of this industry and given FHWA's many years of focusing on educational activities, one might ask if the FHWA program is properly balanced. Although most would agree that some level of educational activities is essential, the issue is: Should FHWA be primarily a public safety consultant or an enforcement agency? What mix of activities is appropriate? Should Congress now formally provide guidance or direction on these issues?

One option might be for Congress to specify for example, that not more than one-third of FHWA's motor carrier safety budget can be used for education-oriented activities. It can be argued that most of the educational activities that FHWA is providing should be conducted by the private sector and paid for by the private sector. It can also be argued that since only the FHWA [and State and local officials] can bring enforcement actions, but other entities can conduct educational programs, FHWA should spend most of its time conducting enforcement actions.

On the other hand, some might maintain that such specification would be micromanagement of a Federal program. It can also be argued that educational activities can also raise the compliance level of many carriers and that when education is effective, it can

be more cost-effective than enforcement activities. ATA maintains that the determination of how much time is allocated for educational activities versus enforcement should be left to FHWA rather than Congress.

Require FHWA to Submit a Bi-Annual Report to Congress on Motor Carrier Safety and its Implementation of Various Safety Laws

In order to assist congressional oversight of the FHWA program, it might be helpful to have FHWA prepare a report every two years that overviews its program and evaluates it effectiveness. Such a report might consider such topics as usage of staff resources, accomplishments, workload, major rulemakings, problems affecting the effective implementation of the motor carrier safety laws, and recommendations for legislative changes.

The development of such a report would require manpower and funds from an agency that is already stretched rather thin.

Create a Separate Motor Carrier Safety Administration

Congress might consider creating a separate Motor Carrier Safety Administration within DOT to implement all motor carrier activities assigned to DOT's Secretary.

Many of the difficulties that FHWA faces in the area of motor carrier safety might be related to the fact that there is no separate DOT modal administration that deals only with truck and bus safety. The increased level of visibility and stature that might come from a separate modal administration in DOT could help to address some of the personnel and resource problems previously addressed. These problems include the relatively low grade level of the nonsupervisory, senior FHWA safety specialists; the inadequate number of specialists to perform effectively the safety functions assigned to FHWA; and the disproportionately lower amount of Federal funds that are provided for the enforcement of truck and bus safety regulations as compared to the amount of Federal monies spent on the enforcement of commercial airline and railroad safety regulations. Both aviation and rail have their own modal administrations within DOT.

Historically, FHWA has argued that creation of a separate motor carrier safety administration within DOT is unnecessary and costly. FHWA maintains that it is important to keep its commercial motor vehicle safety activities integrated with its other highway-oriented activities.

An alternative to creation of a separate modal administration was advanced in a recent report issued by the Office of Technology Assessment:

> Congress may wish to require DOT to develop a plan to integrate the technical expertise now divided between NHTSA and the motor carrier and highway design sections of FHWA to address issues such as roadway and vehicle compatibility guidelines, upgraded safety equipment standards, national guidelines for training for maintenance personnel and drivers, and accident reduction and

mitigation strategies. The approach that DOT has taken to developing the commercial driver's license program is commendable; it could serve as a model for efforts to deal with equipment requirements and highway design issues.

OTA further concludes that DOT agencies need to cooperate and coordinate in collecting and analyzing data, conducting research programs, and developing regulatory proposals.[101]

Encourage DOT to Make More Effective Use of its Existing Authorities to Shut Down Part or all of the Operations of an Imminently Hazardous Motor Carrier

The Motor Carrier Safety Act of 1984 authorized that when the Secretary of DOT determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary can order an employer to cease all or part of the employer's commercial motor vehicle operations. Although the FHWA was granted this authority and has developed draft instructions to govern its use, FHWA has never used this authority. FHWA recently established a task force to examine how this and other legal provisions of the 1984 Act might be used to enhance its enforcement program.

Because the shutting down of a motor carrier for a even a short period of time could lead to bankruptcy, it would be essential that the FHWA use this authority judiciously.

There are certainly some carriers that are operating trucks under conditions that enforcement officers call "accidents waiting to happen." FHWA employees would like to shut down some of these operations until their compliance practices improve.[102]

The Congress may want to consider various ways to encourage FHWA to establish expeditiously the administrative framework to allow this authority to be used effectively. Congress might consider mandating a specific date at which time all operational guidelines for implementation of this authority would need to be specified and become effective and all criteria for its use would need to be defined. However, some might consider such a provision a form of micromanagement, especially since FHWA is working on this issue. However, this authority is now roughly five years old.

Maintain the Current Program

There is always the option of allowing FHWA to continue to improve its motor carrier safety education and enforcement programs at its own pace. As previously discussed, FHWA has implemented many new enforcement strategies and educational activities that are already having a positive impact on this Agency's safety program.

Several FHWA employees stated that the positive benefits of all of these changes have not yet been fully reflected in safety statistics or in various measures of FHWA's safety activities or accomplishments. They suggested that Congress might consider waiting

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[101] Office of Technology Assessment. Gearing Up for Safety: Motor Carrier Safety in a Competitive Environment, 1988. p. 79.

[102] Personal communication with FHWA staff, 1988.

before making substantial changes in FHWA's program. Furthermore, they pointed out that time and program costs would be required to retrain FHWA field staff to implement a revised and possibly more vigorous enforcement-oriented program.[103]

Perhaps, continued and occasional congressional oversight of FHWA's implementation of its motor carrier safety responsibilities is all that is needed. However, reliance solely on this option could prove risky, especially if FHWA cannot or does not address the major enforcement and workload problems that have been identified in this report.

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[103] Ibid., 1989.